PATNA HIGH COURT

Mahanth Sukhdeo Das

Vs

Kashi Prasad Tiwari

A.F.A.D. No. 634 of 1949 and A.F.O.O. No. 106 of 56

(V. Ramaswami, C.J., B.P. Jamuar and Kanhaiya Singh, JJ.)

04.07.1958

JUDGMENT

B.P. Jamuar, J.

1. These two cases have been referred to the Full Bench and they involve the construction of certain provisions of the Land Reforms Act. It will be more convenient to deal with them separately. Second Appeal No. 634 of 1949

2. This second appeal has been brought by the defendants from a judgment and decree of the Additional Subordinate Judge of Monghyr dated the 12th March, 1949, in a suit for partition. The suit has been decreed by both the courts below.

3. The plaintiffs sued for partition of certain plots in village Parbatta, Jagir Hasanuddin Nayak, Tauzi No. 1920. These plots are Nos. 247 and 249 of Khata No. 83 having an area of 5 bighas 10 kathas and 18 dhurs', and plot Nos. 246, 248 and 250 of Khata No. 84 having an area of 4 bighas, 17 kathas and 4 dhurs. The plaintiffs claimed to be proprietors to the extent of eight annas in the aforesaid Jagir, and the remaining eight annas belonged to the defendants first party. The land bearing a total area of 10 bighas, 7 kathas and 12 dhurs was alleged to have been in joint possession of the parties. It was further stated by the plaintiffs that on a demand for partition the defendants had refused. Hence the necessity to bring the suit.

4. The defendants admitted that they and the plaintiffs were the proprietors of the Jagir in question possessing half share each, but denied that the disputed lands constituted bakasht of the proprietors. It is common ground that the ancestors of the plaintiffs and the defendants purchased the Jagir as far back as 1839 by a deed of sale dated 31-5-1839. Their defense was that formerly the disputed lands comprised in this Jagir formed the raiyati lands of tenants and that the defendants had acquired the tenancy rights by purchase long before the acquisition of the Jagir by their ancestors and the ancestors of the plaintiffs, and, therefore the acquisition of the Jagir had not the effect of causing merger of the two interests and that in spite of the acquisition of the proprietary interests, the defendants continued to hold the lands as raiyats.
They alleged further that subsequent to the acquisition there have been mutual dealings between

the parties with respect to these lands which amounted to confirmation of their raiyati interest by the plaintiffs. It was alleged that 2 bighas out of plot No. 250 of khata No. 84 was settled by the defendants with one Ramcharan Mandal as an under-raiyat at an annual jama of about Rs. 8-5-0 besides cess and that the plaintiff No. 1 acquired these two bighas from Ramcharan Mandal in exchange under a registered deed dated 22-9-1941, and was paying rent to the defendants for these lands at the same jama. It was further stated that 1 bigha out of plot No. 249 of khata No. 83 had been settled by the defendants with the plaintiffs, and the plaintiffs gave in exchange 1 bigha of land in Jagir Rajvi Naik to the defendants and the defendants were paying certain rent to the plaintiffs, and the plaintiffs were paying the same amount of rent to the defendants. In these circumstances, the defendants pleaded that a suit for partition was not maintainable.

5. The trial court rejected the defense and, accepting the case of the plaintiffs, decreed the suit and allowed partition. The defendants went up in appeal to the District Judge. The appeal was heard by the Additional Subordinate Judge who, as I have indicated, by his judgment and decree dated 12-3-1949, dismissed the appeal.

6. Before the lower appellate Court the grounds taken by the defendants in their defense were reiterated and negatived. Relying upon the survey record of rights and the evidence, it held that the disputed lands were the bakasht lands of the proprietors, namely, the plaintiffs and the defendants and not the raiyati lands of the latter. It negatived further the defense that the lands were formerly occupancy holdings and had been purchased by the defendants. The mutual dealings evidence only the mode of possession and did not affect the proprietary interests in the bakasht lands. Thus, in effect, it held in agreement with the learned Munsif that the lands were bakasht and liable to partition. The defendants have preferred this second appeal.

7. This appeal came up for hearing before a Division Bench of this Court, and Mr. G. P. Das appearing for the appellants did not contest the concurrent findings of the two courts below. He urged before the Division Bench that the enforcement of the Bihar Land Reforms Act, 1950 (XXX of 1950) hereinafter referred to as the Act, subsequent to the decree of the lower appellate Court has changed the legal position and rendered the suit of the plaintiffs for partition ineffective. Because of the general importance of the point taken by Mr. Das, the Division Bench referred the matter to a Full Bench for decision.

8. Subsequent to the passing of the decree by the lower appellate Court, the Act was applied in the State of Bihar and by virtue of that Act the proprietary interest in the lands in suit has vested in the State of Bihar under section 3 of the Act. Section 4 lays down the consequences of the vesting, and sections 4 and 6 of the Act taken together save for all practical purposes the lands which were in khas possession of the intermediary on the date of the vesting, and section 6 (1) lays clown that such lands shall be deemed to be settled by the State with such intermediary. Basing his argument on the provisions of section 6 of the Act, Mr. Das contended that the disputed lands must be deemed to be settled with the defendants as they were in immediate possession of the lands on the date of the vesting, and, therefore, whatever interests the plaintiffs had in the lands had been extinguished by the operation of the Act, and, consequently, their suit for partition had become infructuous and must be dismissed. Mr. Das candidly conceded that on the concurrent findings of the Courts below the suit out of which the present appeal arises could be decreed but for the intervention of the Act. In support of his argument Mr. G. P. Das cited the case of *Ramgobind Singh v. Ramranbijai Singh*[1], He also relied upon a Bench decision of this

Court in the case of *Badri Singh v. Ram Kishore Prasad Singh, an unreported decision in*[2] These cases apparently support him. The former was a case where the plaintiffs sued for declaration of their title and recovery of possession with mesne profits. It was held that, by reason of the passing of the Bihar Land Reforms Act, the plaintiffs were entitled to a declaration of their title and mesne profits but not to recovery of possession on the ground that a co-proprietor who is not in possession of bakasht land cannot get a decree for possession and cannot claim that the land be settled with him. Now, the facts of that case were these. The plaintiffs' ancestors had given in usufructuary mortgage some of their zirat lands, and then executed another rehan bond in favour of second mortgagees in which was included the lands of the first mortgage; and a portion of the rehan money was left with the second mortgagees to redeem the earlier mortgage. The second mortgagees redeemed the earlier mortgage and, thereafter, remained in possession of the lands in suit. Later, the plaintiffs redeemed the subsisting mortgage bond. After redemption the plaintiffs could not obtain possession of the lands in suit. Hence the suit. It is not necessary to set out the various other complications which had been created by the mortgagees in that case and by which the plaintiffs claimed not to have been bound. Nor is it necessary to state the defense to the suit. The Court below had found with the plaintiffs. It held that the lands in suit were the zirat of the plaintiffs and, finally, that the possession of the defendants became that of trespassers as against the plaintiffs on redemption of the second mortgage by them. On the findings, the suit was decreed. The contesting defendants appealed to the High Court. In the meantime, the Bihar Land Reforms Act was passed and the proprietary interest of the plaintiffs vested in the State of Bihar. Hence, in appeal, it was argued on behalf of the defendant-appellants that, in view of the provisions of this Act, the plaintiffs ceased to be proprietors of the land, and, therefore, they have no cause of action for the suit and the suit ought to be dismissed. This argument was resisted on behalf of the plaintiff-respondents. It should be mentioned that, under section 4 (ee) of the Land Reforms Act, notice having been given to the State of Bihar, the State of Bihar appeared through counsel who submitted that the State of Bihar was entitled to a decree for possession, as also for mesne profits from the date of vesting. It was held in that case as follows :

> "In my opinion, therefore, there is no merit in the submission of the learned Advocate General that the plaintiffs' suit has to be dismissed because their proprietary interest vested in the State of Bihar by the Bihar Land Reforms Act aforementioned. They ceased to be proprietors under that Act on 1-1-1955. That is, in my opinion, no reason to dismiss their suit in its entirety. The plaintiffs will be entitled to their declaration sought for and to mesne profits till the date of vesting of their proprietary interest in the State of Bihar, provided the appellate Court confirms the findings of the Court below in regard to their title.

The only thing that can happen as a consequence of the passing of the Bihar Land Reforms Act is that they shall not be entitled to a decree for recovery of possession, because, on the date when the appellate court judgment is pronounced, they have no right under the present law to recover possession of these lands in suit." All the other points raised in the appeal were decided in favor of the plaintiffs, and, finally, it was decreed that

> "the plaintiffs shall be entitled to a decree for a declaration of their title to the effect that the lands in suit are the proprietors' private lands belonging to the plaintiffs and that they

> are entitled to mesne profits"

up to the date of vesting but that "the decree for possession is set aside."

9. With regard to the claim of the State of Bihar for a decree for possession and mesne profits from the date of vesting, it was refused on the ground that the State had not made any application to the Court for being added as a party, and, since it had not been added as a party, the question of contesting and defending the suit did not arise. Hence no relief was given to the State of Bihar.

10. Thus the reason for refusing the plaintiffs a decree for possession was that their proprietary interest had vested in the State of Bihar under the Land Reforms Act and there was statutory lease back of the lands in favour of the proprietors actually in possession.

11. In the latter case, the appeal arose out of a suit for partition (as in the present appeal before us). The suit was in respect of two khewats, khewat No. 3 in patti Khalispur original and khewat No. 7/1 in patti Harlochanpur dependency. The plaintiffs alleged that the parties were in joint possession and occupation of the two khewats. The suit was defended on the ground amongst others, of a previous partition of the lands of khewat No. 3 and there was no objection to the partition of lands of khewat No. 7/1. The suit was decreed by the trial Court in respect of both the khewats, and a preliminary decree for partition was passed. The defendants appealed to the High Court.

12. The High Court accepted the findings of fact of the court below and held against the allegations of the defendants of a previous partition etc. This Court also observed that though in law, possession of one co-sharer was possession of the other co-sharers, yet, factually all co-sharers were not in khas possession of all the Zirat and bakasht lands.

13. The argument for the defendants on appeal was that the estates (comprised in khewat No. 3) having already vested in the State of Bihar under the Bihar Land Reforms Act (after the decree of the trial Court), the trial Court's decree for partition of these estates cannot stand and this Court should take notice of this new legislation and its effect on the decree.

14. The contention of the appellants in the High Court prevailed in that case. It was pointed out that neither section 2 (k) nor section 6 of the Land Reforms Act covered such lands which were in factual possession of one co-sharer though in constructive possession or possession in law of all the co-sharers. And, therefore, it was held that

> "only the particular co-sharer, who was in khas possession of the land on the date of vesting of the estate, khas possession within the meaning of section 2 (k), shall get lease back of the lands in his khas possession by virtue of section 6 of the Act and he and he alone shall be entitled to retain possession thereof as a raiyat under the State." It was then said :
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> "It may be in a fresh suit, on new facts being investigated, the other co-sharers may be able to claim a share in such lands or a share in the usufruct thereof or some other relief because of section 90 of the Indian Trusts Act or some other principles of law, justice,

> equity and good conscience. But, it is manifest that a simple suit for partition, which was instituted on the basis of joint possession in law of all the proprietors is not maintainable now."

15. It was held that what vested in the State of Bihar was the whole estate of the intermediary; and such lands as are enumerated in sections 5, 6, 7 and 9 of the Act are leased back to the intermediary who was in possession within the meaning of these sections. Hence a new title is created by operation of law. Therefore, a suit for partition instituted on the basis of a title which was before the time that the Land Reforms Act came into force was hot maintainable.

16. The contention of the respondents in appeal: F. A. No. 460 of 1950, to the effect that the expression "khas possession" in section 2 (k) of the Act must be interpreted to include the constructive possession of one co-sharer in the proprietors' private lands, though that particular co-sharer may not be in actual possession, was rejected; and it was held that the Legislature has not enacted lease back of lands etc., under sections 6 and 9 to those co-sharers who were not in khas possession of the lands within the meaning of section 2 (k) read with section 6. Then it was observed :

> "It may be a lacuna in the Act itself. If so, it is for the Legislature to fill it up. It may be that the Legislature intended to lease back the lands and the mines only to such intermediaries who are active and capable enough to cultivate the lands and to work the mines on the date of the vesting of the estate. If so, the language is plain enough to indicate that intention."

The result was that the suit, so far as it related to the partition of khewat No. 3, was dismissed as not maintainable. So far as khewat No. 7/1 was concerned, it was held that, as it was nobody's case that any particular co-sharer was in khas possession of any particular portion of the proprietors' lands of that khewat, it could be presumed that the entire body of co-sharers was in khas possession of the entire land and the suit was maintainable.

17. Mr. Das adopted the reasons given in the two decisions quoted above and contended that section 6 barred the suit for partition or, for the matter of that, the suit for possession, of bakasht lands by a co-sharer not in actual possession on the date of the vesting of the estate. Mr. Lalnarain Sinha appearing for the plaintiffs-respondents, on the other hand, contended that. the decisions in both the cases were wrong, and the arguments advanced by Mr. Das were fallacious on a plain reading of section 6 of the Act as also on general principles.

18. The decision of this case rests upon the true scope and effect of Section 6 of the Act, more particularly, on the significance of the expression "Khas possession" used therein. Section 6 (1) of the Act provides as follows :

> "On and from the date of vesting, all lands used for agricultural or horticultural purposes, which were in khas possession of an intermediary on the date of such vesting including (a) (i) proprietors' private lands let out under a lease for a term of years or under a lease from year to year, referred to in section 116 of the Bihar Tenancy Act, 1885,

(ii) landlords' privileged lands let out under a registered lease for a term exceeding one year or under a lease, written or oral, for a period of one year or less, referred to in section 48 of the Chotanagpur Tenancy Act, 1908,

(b) lands used for agricultural or horticultural purposes and held in the direct possession of a temporary lessee of an estate or tenure and cultivated by himself with his own stock or by his own servants, or by hired labour or with hired stock, and

(c) lands used for agricultural or horticultural purposes and in the possession of a mortgagee which immediately before the execution of the mortgage bond were in khas possession of such proprietor or tenure-holder, shall notwithstanding anything contained in this Act, be deemed to be settled, by the State with such intermediary and he shall be entitled to retain possession thereof and hold them as a raiyat under the State having occupancy rights in respect of such lands subject to the payment of such fair and equitable rent as may be determined by the Collector in the prescribed manner;

Provided that nothing contained in this sub-section shall entitle an intermediary to retain possession of any land recorded as chaukidari chakran or goraiti jagir or mafi goraiti in the record of rights or any other land in respect of which occupancy right has already accrued to a raiyat before the date of vesting."

Stated simply, by virtue of section 6 there is a statutory settlement with the intermediary of the bakasht lands in his khas possession on the date of the vesting of the estate. The question is what is the meaning of the words 'intermediary' and 'khas possession'. Does the word 'intermediary' mean the person in actual possession of the land or the entire body of intermediary affected by the vesting of their estate, though not in actual possession of the land? Does the expression "khas possession" mean the possession of the intermediary who is actually cultivating the land or the possession of all the intermediaries taken together? The two decisions relied upon by Mr. Das proceed upon literal interpretation of the section and ignore the history of this legislation, the laws in force on the date of the enforcement of the Act and the legal principles which are firmly established in our jurisprudence. In this connection the following observations of Crawford in his Construction of Statutes, 1940 Edition, may be usefully reproduced :

"Just as the different words, phrases and provisions of a statute should not be isolated and given an abstract meaning, so the statute itself in its entirety should not be interpreted solely by reference to its own terms, but rather by reference to the other laws of the state, and particularly to those pertaining to the same subject. Every statute should be regarded as a part of the whole body or system of law.

Consequently, in construing a statute, the constitution, the common law, and other statutes, particularly those in pari materia and those expressly referred to, should be examined, in the effort to ascertain the intention of the legislature. Then, too, the Legislature is presumed to have known the condition of the law in existence whenever a given statute was enacted. As a result, even judicial decisions must be taken into consideration. Moreover, there is also a presumption that the legislature did not intend to overthrow legal principles which have been in existence for a long period of time, in the absence of a contrary intent clearly expressed in the statute. In other

words, any statute which requires construction should be construed to be in harmony with existing law. This is a basic principle of construction." (section 227, page 420). Then the provisions of the Act have to be construed in the light of the existing law and in the light of the history behind this legislation. Any construction in utter disregard of the existing law and the history that led to its legislation may lead to error. The primary object of the Act is to abolish the zamindary by acquiring the interests of the proprietor, tenure-holder, under-tenure-holder and trustees, which have been compendiously described as intermediary in the Act, in other words, the intervening interests of all persons below the paramount authority, namely, the State, and above the tillers of the soil. It was not the object of the Act to decide disputes or settle the conflicting interests between the proprietors inter se, nor did it intend, either directly or by necessary implication, to make any innovation on the existing law beyond what was necessary to effectuate the intention of the legislature, namely, to acquire zamindaries. The entire scheme of the Act shows that they legislated only on the matters which facilitated the acquisition and possession of the estate of the intermediaries by the State. The legislature did not concern itself beyond that. This object of the Act has been described in the preamble which is as follows :

> "Whereas it is expedient to provide for the transference to the State of the interests of proprietors and tenure-holders in land and of the mortgagees and lessees of such interest including interests in trees, forests, fisheries, jalkars, ferries, hats, bazars, mines and minerals, and to provide for the constitution of a Land Commission for the State of Bihar with powers to advise the State Government on the agrarian policy to be pursued by the State Government consequent upon such transference and for other matters connected therewith."

This basic foundation of the Act has to be kept in view while construing its provisions.

19. Bearing in mind the object and purpose of the Act and the general principles which govern the construction of such statutes, I proceed to consider the scope of section 6. Before I do so, it will be necessary to know how some of the expressions used in this section have been defined in the Act itself. I will reproduce here the statutory definitions of the relevant terms:

> "2 (jj) 'intermediary', in relation to any estate or tenure, means a proprietor, tenure-holder, under-tenure-holder and trustee;"
> "2(jjj) "intermediary interest' means the interest of an intermediary in an estate or tenure".
> "2 (k) 'khas possession' used with reference to the possession of a proprietor or tenure-holder of any land used for agricultural or horticultural purposes means the possession of such proprietor or tenure-holder by cultivating such land or carrying on horticultural operations thereon himself with his own stock or by his own servants or by hired labour or with hired stock;"
> "2 (o) 'proprietor' means a person holding in trust or owning for his own benefit an estate or part of an estate, and includes the heirs and successors-in-interest of a proprietor and, where a proprietor is a minor or of unsound mind or an idiot, his guardian, committee or other legal curator;"
> "2 (r) 'tenure-holder' means a person who has acquired from a proprietor or from any

other tenure-holder a right to hold land for the purpose of collecting rent or bringing it under cultivation by establishing tenants on it and includes-

(i) the successors-in-interest of persons who have acquired such right,

(ii) a person who holds such right in trust, (in) a holder of a tenure created for the maintenance of any person,

(iv) a ghatwal and the successors-in-interest of a ghatwal, and

(v) where a tenure-holder is a minor or of unsound mind or an idiot, his guardian, committee or other legal curator"; .

It will appear from the above that 'proprietor' does not mean only the person owning an estate for his benefit and in actual possession. It also includes a proprietor holding an estate in trust for another and also the heirs and successors-in-interest of a proprietor or where a proprietor is a minor or of unsound mind or an idiot, his guardian, committee or other legal curator. Similarly, a tenure-holder does not mean a person who is actually in possession of the tenure but includes also a person who holds such right in trust for others. Similarly, where the tenure holder is a minor or of unsound mind or an idiot, the term 'tenure-holder' includes his guardian, committee or other legal curator. 'Intermediary' in relation to an estate or tenure thus means a proprietor, tenure-holder, under-tenure-holder and trustee. Considered in the light of the definitions of 'proprietor' and 'tenure-holder' an intermediary may be defined to mean a person who owns and possesses an estate or tenure either in his own right and for his own benefit or in trust for others. Consequently, the expression "on or from the date of vesting, all lands used for agricultural or horticultural purposes, which were in khas possession of an intermediary on the date of such vesting" in section 6 considered in the light of the aforesaid definitions, does not mean the possession of the intermediary who was actually in possession on the date of the vesting to the exclusion of the co-intermediaries. Obviously enough, khas possession of the intermediary means the possession of the intermediary who was cultivating land either for his own benefit or in trust for others. If this be the position of an intermediary under the Act, then obviously enough the words "khas possession" do not exclude constructive possession. All the lands which are in khas possession of a proprietor or tenure-holder do not fall within the purview of section 6 of the Act. The lands which under this section are statutorily leased back to the proprietor or tenure-holder must fulfil the conditions laid down therein, namely, (1) the lands must be used for agricultural or horticultural purposes, as distinguished from waste lands, and (2) they must be in khas possession of the intermediary, which in terms of the definition of khas possession as given in Section 2(k)) implies drat the intermediary must cultivate such lands or cany on horticultural operations thereon himself with his own stock or by his own servants or by hired labour or with hired stock. In other words, the lands must not be cultivated by a person who has acquired some sort of tenancy right therein. The main object of giving a fictitious definition to the word "khas possession" was to distinguish the lands actually cultivated by the landlords from the lands cultivated by the tenants. When the Act has defined what is meant by "khas possession", it is not necessary to go into a detailed discussion on the legal concept of the word 'possession'. The lands may be cultivated either personally or through tenants. The lands which were actually in possession of the tenants did not vest in the State.

20. As will appear from Section 4, on the vesting of the estate or tenure the interests of raiyats or under-raiyats are not affected, and they could not be affected, because the primary object of the

Act was to acquire only the interests of the persons intervening between the tenants and the State. By giving, therefore, a statutory definition to the words "khas possession" the legislature intended to distinguish the lands in cultivating possession of the proprietor or tenure-holder from the lands in possession of the tenants having occupancy rights there in. This was the main legislative intent for giving a statutory definition to the expression "khas possession". The emphasis on the expression "Khas possession" in Section 6 is not on the person holding it but on the manner and method of possession. In other words, the lands which are governed by Section 6 must be such as are culturable and under cultivation and are possessed by a tenure-holder or a proprietor. If on the other hand, the emphasis is on the person possessing the land, as contended by Mr. Das, which will exclude constructive possession, then the entire Section 6 becomes anomalous and inconsistent. It will appear that under Section 6 some lands though not in khas possession of the intermediary will also be deemed to be settled with him. These lands have been described in sub-clauses (i) and (ii) of clause (a), clause (b) and clause (c). The lands though in possession of the lessee or the mortgagee, as the case may be, and though not in physical possession of the proprietor or tenure-holder will be deemed to be settled with him. If the expression "khas possession" were to mean bodily possession, the possession of lessees and mortgagees will be excluded, which is not a fact, because by virtue of clauses (a), (b) and (c), such lands also though in possession of lessees or mortgagees become his occupancy holding under the Act. To give a harmonious and consistent meaning to different provisions of Section 6, which is a cardinal principle of construction, the words "khas possession" must include also constructive possession. If the legislature intended by using the expression "khas possession" to mean actual physical possession, then different provisions of Section 6 become self-contradictory since the provisions of clauses (a), (b) and (c) are clearly destructive of that meaning. Thus, the words "khas possession" do not mean actual physical possession; it only means possession of land by cultivation or by carrying on horticultural operations thereon without the intervention of tenants. The lands not under cultivation, though in khas possession of an intermediary, are outside the scope of section 6. On a true construction of this section, therefore, khas possession of an intermediary in sub-section (1) of this section, simply means cultivating possession of the intermediary either in his own right or on behalf of others. Therefore, even if one of the intermediaries is in cultivating possession, the land will be deemed to be settled with the entire body of the intermediaries interested therein, though for the time being some of the intermediaries were not in actual possession of the land. There is nothing in section 6 to warrant exclusion of such intermediaries as are not in actual possession of the land on the date of the vesting. That seems to be the true meaning of sub-section (1) of section 6. To accept the interpretation sought to be put by Mr. Das will produce absurd results and will amount to abrogation of the existing law for which there is no express warrant in the provisions of the Act. For instance, suppose just one day before the date of vesting a trespasser forcibly dispossesses an intermediary and annexes the land to his land. Now, on textual interpretation of sub-section (1) of Section 6, as is contended by Mr. Das, the lands will be deemed to be settled with that trespasser. A trespasser has obviously no right in the land. Under the existing law of the land, proprietors or the tenure-holders, as the case may be, who were in possession prior to their wrongful dispossession, were in law entitled to possession by eviction of the trespasser. On the literal interpretation, not only are they deprived of their right, but also a right is created in favor of the wrong-doer. The effect of this construction is that not only the rightful owners are deprived of their right, but a new right is created in a person who had no semblance of justification for possession. The rule is well established that a person cannot profit by his own wrong.

21. Again, suppose there are three or four co-sharers who jointly own certain bakasht lands but by virtue of some arrangement, either express or implied, only one of them cultivates the land while others carry on business or serve at distant places and realise from the partner in possession their share of the property. There is no difference between them. If the strict interpretation be accepted, the entire land will go to the co-sharer who was actually in possession to the exclusion of the other co-sharers, without giving due regard to their admitted relative possession. This is also destructive of the well-established rule of law in force before, on and after the date of vesting. The possession of a co-owner is, in law, the possession of his other co-owners. The reason is that the possession of one co-owner who is entitled as such co-owner to be in possession of the property must be referred to his lawful title to enter and cannot, therefore, be considered adverse to other co-owners. If he wants to exclude the other co-owners from possession, it is for him to make a declaration of ouster. Nothing short of ouster or something equivalent to ouster can bring about the cessation of the interest of the other co-owners. Here also, a co-sharer may wrongly keep his co-sharer out of possession and then after the vesting may take advantage of his own wrong and may resist the suit of his co-sharer for possession or for partition. In the present case, the plaintiffs obtained a decree for partition long before the vesting and their right to the land was declared and their right to khas possession by partition was also declared and this decree was final but for the enforcement of the Bihar Land Reforms Act in the meantime. The effect of the construction sought to be put by Mr. Das will be to accord a statutory recognition of an illegal title and deprive the rightful owners of their legitimate interest for no obvious reason. The possession of the defendants was obviously wrongful from the time the co-owner demanded partition and possession and the defendants refused partition, and it is obvious that a suit for partition is the most unequivocal method for a co-sharer to demand his share and separate possession. In the case of *Govind Dutta v. Jagnarain Dutta*[3], my Lord the Chief Justice delivering the judgment of the Bench has laid down that possession is good title against all but the true owner and a person in peaceable possession of land has, as against every one but the true owner, an interest capable of being inherited, devised or conveyed. The possession of the co-owner, therefore, must enure to the benefit of all the co-owners whose title stands admitted and he cannot resist the suit for partition or possession of the other co-owner, although he may effectively use his possession against those having no title. In the case of *Asher v. Whithock*[4], a similar principle was laid down. W in 1842 inclosed some waste land; in 1850 he inclosed more land adjoining, and built a cottage; he occupied the whole till 1860, when he died, having devised it to his wife, so long as she remained unmarried, with remainder to his daughter in fee. On his death, the widow and daughter continued to reside on the property, and in 1861 the defendant married the widow, and came to reside with them. Early in 1863 the daughter died, aged eighteen years, and the mother died soon after. The defendant continued to occupy the property, and in 1865 the daughter's heir-at-law brought ejectment against him. The plaintiff was held entitled to recover the whole property. It has been laid down that a person in possession of land without other title has a devisable interest; and the heir of his devisee can maintain ejectment against a person who has entered upon the land, and cannot shew title or possession in any one prior to the testator. Cockburn, C.J., observed as follows:

> "But I take it as clearly established, that possession is good against all the world except the person who can shew a good title; and it would be mischievous to change this established doctrine." On the simple ground that possession is good title against all but the true owner, the plaintiff was given a decree in ejectment. Two consequences flow from

> this established principle, first, the possession of an intermediary is enough to entitle him to eject any trespasser; secondly, the possession of an intermediary under section 6 will not avail against his co-sharers who have title to the lands and were entitled in law to possession. The suggested construction will annul this established rule of law.

22. Apart from the definition of proprietor which includes a proprietor holding interests for others there is a specific provision for protection of the rights and interests of the co-owners against wrongful possession of the other co-owners, and that is section 90 of the Indian Trusts Act, 1882, which lays down as follows :

> "Where a tenant for life, co-owner, mortgagee or other qualified owner of any property, by availing himself of his position as such, gains an advantage in derogation of the rights of the other persons interested in the properly, or where any such owner, as representing all persons interested in such property, gains any advantage, he must hold, for the benefit of all persons so interested the advantage so gained, but subject to repayment by such persons of their due share of the expenses properly incurred, and to an indemnity by the same
> persons against liabilities properly contracted, in gaining such advantage."

This section protects the interest of all the co-owners against any hostile act of the other co-owners provided of course that co-owner gained sonic advantage in derogation of the rights of the other co-owners by availing himself of his possession as such. This law is equally well-settled. In the case of *Deonandan Prashad v. Janki Singh*[5], the agents for a minor, the mortgagee of a separately owned share in property, intentionally made default in paying the revenue for which he was responsible with a view to the property being brought to sale and being purchased on behalf of the mortgagee, as in fact happened. It was not - shown that the co-sharers with the mortgagor knew of the default or sale. Their Lordships of the Privy Council held that it should be declared that the property was held for the benefit of all the co-sharers and the mortgagee, according to their several interests at the date of the sale, subject to repayment to the mortgagee of the expense properly incurred in the purchase, together with interest thereon. The same principle was laid down in the case of *Ram Rup Singh v. Jang Bahadur Singh*[6], A executed a usufructuary mortgage (Sudbharna bond) of his holding in favour of B who entered into possession under it. It was expressly agreed between the parties that B would pay the landlord's dues in respect of the holding out of the consideration left in his hands. B failed to pay the amount of rent decree with the result that the holding was sold in execution of the rent decree and was purchased by the landlord himself. B subsequently took settlement of the holding from the landlord. A sued B for redemption of the mortgage. It was proved that B was guilty of fraud and collusion in making default in payment of rent decree and taking fresh settlement of the holding. It was held that B was clearly in the wrong in allowing the property to be sold in execution of the rent decree and by taking settlement from the landlord he could not take advantage of his own wrong and change the character of his possession and deprive A of his right of redemption. It was not open to B to contend that the plaintiff had lost his right of redemption because the old tenancy had extinguished by the rent sale.

23. Therefore apart from the construction I have put on section 6 in the light of the definition of

the proprietor, tenure-holder and the intermediary, under the existing law by virtue of section 90 of the Trusts Act, the possession of a co-owner will enure to the benefit of the other co-owners wherever the co-owner by virtue of his position as such has gained any advantage in derogation of the interests of the other co-owners.

Then, there are cases of the persons who because of certain disability, legal or physical, cannot cultivate the lands themselves, for instance, minors, lunatics, invalids, and if their lands are cultivated by their co-owners, it cannot be said that the lands will be deemed to be settled with that co-owner, and the minors, invalids and the lunatics will be deprived of such lands. Can it be legitimately urged that the legislature intended to do away with the settled principles of law? These principles do not hamper the operation of the Act: on the contrary, their destruction operates harshly against the true owners. The legislature must be aware of those legal principles and the manifest injustice which their abrogation will entail. Why the legislature will punish innocent citizens having legal rights, when the sacrifice of their interest did not advance the objective it had in view. To quote Crawford, "we must
presume that the legislature intends that its pronouncements will operate fairly,
reasonably and equitably". It is true that where the language is clear and unequivocal, effect must be given to the express provision of the Act unhampered by any equitable considerations. The question of convenience has no scope where the language is clear and the meaning of the legislature is unambiguous. It is often no doubt for the legislature to alter any existing law. Where this intention appears, there is a

> "presumption that the law-makers did not intend to alter the common law beyond the scope clearly expressed or fairly implied. In fact, it may be set down, as a general rule, that a statute in derogation of the common law shall be strictly construed". (Crawford, Statutory Construction).

The law was enacted not for the benefit of trespassers, nor for the benefit of the wrong-doer, nor was it intended to impair or abridge the rights which are outside the scope of the enactment. Its main object was the benefit of the State and thereby the benefit of the general public. The construction which advances that object and keeps intact the other existing laws is, in my opinion, the only construction which should be adopted unless it runs counter to the legislative intent directly expressed. It is manifest that it is not the intention of the present enactment to deal with and regulate all the rights a person has under the existing law, especially, laws relating to property rights. It deals only with the elimination of those who are parasites on the land and makes no contribution to its actual cultivation. In democracy it is a truism that where the entire public welfare is involved, often individual rights must be subservient thereto. But is the construction put by Mr. Das necessary to effectuate the policy of the legislature?

Does the construction I put on it retard the achievement of the objective the framers of the law had in view? If it does not, and at the same time harmonises the other connected law and promotes justice and prevents injustice, there is no reason why it should not be adopted. The statutes of this type should not be construed to modify or abrogate the existing law any further than is expressly stated, or necessarily implied from the language used. In my opinion, there is no ambiguity in the provisions of section 6. It is the proposed construction which tends to conceal the real meaning. The provisions of section 6 do not in terms say that all the connected laws in force on the date of vesting stand modified or altered. If the reason why this Land Reforms Act was passed by the legislature is kept in mind, there is no escape from the conclusion that the

intermediary mentioned in section 6 must imply the entire body of intermediaries, irrespective of the actual possession by some, and khas possession must also mean not only actual possession but also constructive possession, provided possession is exercised in the prescribed manner. This construction will preserve all the existing rights of all the co-owners and at the same time help achieve the object the framers of the law had in view. It must be construed in its widest amplitude to include also the right to possession as between proprietors and tenure-holders inter se or against third persons holding illegal possession. One of the canons of interpretation is that "the Court should strive to avoid a construction which will tend to make the statute unjust, oppressive, unreasonable, absurd, mischievous, or contrary to the public interest." The same principle has been laid down in the case of Board of Works for the *Plumstead District v. Spackman*[7], Brett, M. R. observed as follows :

> "When the words of an Act, being read in their ordinary meaning, are capable of an interpretation which will work manifest injustice, yet if it is possible within the bounds of any grammatical or reasonable construction to read the Act so that it will not commit a manifest injustice, the Court ought to construe it upon the assumption that the legislature did not intend, by the words that it has used, to enact that which will perpetrate a manifest injustice."

In the present appeal, to hold otherwise would amount to placing a premium upon dishonesty and permitting a dishonest co-sharer to grab the entire bakasht land by excluding from possession the other co-sharers for no fault of theirs. To give the benefit of section 6 only to the co-sharer in factual possession would circumscribe its scope unduly and would operate hardship against rightful owners. On a true construction of this section the word 'intermediary' in this section would include the entire body of intermediary and possession of one intermediary is the possession of all the co-intermediaries. Khas possession under this section does not mean physical possession but includes also constructive possession of the intermediary. With the greatest deference I take the view different from the one taken in the two cases cited on behalf of the appellants, namely, 1957 BLJR 715: (AIR 1958 Patna 279 and *Badri Singh v. Ramkishore Prasad Singh*[8], (B). In my opinion, these two cases' were not correctly decided and should be overruled.

24. I may mention here that Mr. Das also referred to a decision of this Court in *Brijnandan Singh v. Jamuna Prasad Sahu*[9], This decision, in my opinion, does not help him at all; rather, it supports the view I have expressed above. The points that have been agitated in this appeal did not specifically arise there. The learned Judges, however, have given a meaning of the expression "Khas possession". Ahmad, J., has observed as follows :

> "That means, the word 'khas' in relation to possession over lands in a zamindari estate connotes a possession of the proprietor without the intervention of any tenant and not an actual possession or physical possession.......... Therefore, I think that the expression 'khas possession' in respect of culturable lands in section 6 of the Land Reforms Act has been used in a technical sense and it means those lands which are in the private or personal possession of the landlord as contradistinguished with those which are in his possession through tenants .... That being so, in my opinion, there is no justification for holding

> that the word 'khas' imports an idea of actual and not as stated above or that the word 'possession' conveys the idea of physical possession or what is called occupation and not that of juridical possession."

In a concurrent judgment Misra, J., observed as follows :

> "It has, however, been contended by the learned counsel for the appellant that the Legislature has used the phrase 'khas possession' and emphasis is upon the word 'Khas', so that it must be taken as confining the privilege of section 6 of the Act only to a proprietor or a tenure-holder who is himself in actual
> possession. In my opinion, however, it is not so. The words 'khas possession'
> in relation to the possession of the proprietor or tenure-holder under the Tenancy Laws in India, in general, and in Bengal and Bihar, in particular have been understood as referring to the possession of the proprietor or tenure-holder, as opposed to the possession of a tenant under him. . . .The Legislature in my opinion, never intended to lay down that a person in actual possession alone would be entitled to the privilege provided for in section 6, but it intended to define the status. A person enjoying the status of a landlord with land in his khas possession, and used for agricultural and horticulture purposes, as opposed to land in possession of the tenants, would be entitled to hold the land as having been settled with him by the State. Even clauses a(i), a(ii), (b) and (c) of this section indicate that what is meant is status and not mere possession, in fact, juridical possession and not merely actual possession, right to take khas possession and not mere physical possession."

I respectfully adopt the views expressed by their Lordships.

25. Then, there is a further consideration. Even assuming that the contention of Mr. Das was correct, the plaintiffs cannot be unsuited in the present appeal. The effect of the operation of the Act is that during the pendency of this litigation the interest of the plaintiffs devolved upon the State. Notwithstanding this devolution, they will be entitled to continue this litigation. Sub-rule (1) of rule 10 of Order 22 of the Code of Civil Procedure provides that in cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved. Ordinarily, notwithstanding the devolution of the interest the suit may be continued by or against the original party. The assignee may also appear in the suit at any Stage and continue the litigation, but an assignee under this rule is not entitled to continue the suit as a matter of right. It is discretionary with the Court to allow him to appear in the suit or not. Generally, the leave will not be refused, especially when the person whose interest is the subject of devolution does not take interest in the litigation. Nevertheless, the leave of the Court must first be obtained. There is no such restriction on the original party, and by virtue of rule 10 the suit may be fought to its logical conclusion by the original party despite the devolution of the interest during the pendency of the suit. The main reason for this provision is that the prosecution of a suit cannot be arrested because of devolution of the interest of a party in the subject-latter of the suit. In the case of *Joti Lal Sah v. Sheodhayan Prashad Sah*[10], their Lordships of the Patna High Court have laid down that a person instituting a litigation may prosecute it to its conclusion notwithstanding a

devolution of his interest in the property. The litigation will continue in his name for the benefit of his successors. Their Lordships further held that no doubt rule 10 gives the Court a discretion in allowing or refusing an application by the successors-in-interest to continue the litigation, but leave should not be unreasonably refused. In this case, notice of this appeal was served upon the State, and the State has not preferred to appear in this appeal and to be added as a party. The plaintiffs, therefore, can continue this appeal, and the result of this appeal will be binding upon the State. A co-sharer in possession of bakasht lands can at best claim only his share in such lands, and it cannot justifiably maintain that the entire bakasht lands have been statutorily settled with him. Putting the defense at the highest, the plaintiffs' interests have devolved upon the State, and so far as the interest of the defendants is concerned, they have obtained now a statutory settlement of their share in the bakasht lands. The State will, therefore, be entitled to claim that portion of the bakasht lands which belonged to the plaintiffs which, assuming the construction put by Mr. Das was correct, devolved upon the State. But the defendants cannot by any stretch of language claim the plaintiffs' share of the bakasht lands. Therefore, in any view of the matter, the plaintiffs are entitled to defend this appeal. The only result will be that the decree passed in this appeal will enure to the benefit of the successor-in-interest of the plaintiffs, namely, the State. From this point of view also, the appeal must fail.

26. It follows that the suit was rightly decided by the lower appellate court. I would accordingly affirm its decree and dismiss the appeal with costs.

Miscellaneous Appeal No. 106 of 1956:

27. The following question has been referred to the Full Bench:

> "Whether under the provisions of the Bihar Land Reforms Act, a decree-holder mortgagee of the interest of the proprietor whose estate has vested in the State of Bihar under section 3 of the said Act is entitled to proceed against the bakasht lands of the proprietor comprised in the said estate for recovery of his mortgage decree."

It is necessary to state that the words "bakasht lands" in the question mean lands which are deemed to be settled by the State with the ex-proprietor and the possession of which is retained by him as a raiyat having occupancy right within the meaning of section 6 of the Bihar Land Reforms Act, 1950 (Act 30 of 1950).

28. This appeal was brought to this Court by the judgment-debtor, and it arises out of an execution proceeding in a mortgage decree commenced by the decree-holder.

29. The facts may be shortly stated as follows:

On 8-4-1940, a simple mortgage in respect of 16 annas share in tauzi No. 8537 was executed for a sum of Rs. 5,000. On 31-5-1943, the appellant purchased the equity of redemption to the extent of ten annas in the tauzi. On 15-3-1952, a mortgage suit was brought on the basis of the mortgage, and on 17-3-1954, a mortgage decree was obtained. On 29-3-1954, a preliminary decree was drawn up, and on 14-4-1955, the final decree was passed. On 2-5-1955, execution was taken out in Execution Case No. 14 of 1955.

30. Then, on 1-1-1956, under the provisions of section 3 of the Bihar Land Reforms Act, the estate vested in the State of Bihar. Hence, on 22-2-1956, an objection under section 47 of the Code of Civil Procedure was filed by the judgment-debtor, the appellant, to the effect that further proceedings in the execution case must now be dropped by reason of the provisions of section 4 (d) of the Bihar Land Reforms Act. The learned Subordinate Judge heard the parties on this objection and by his order dated the 5th March, 1956, dismissed the objection.

31. The learned Subordinate Judge has noted in that order that in the course of the argument before him the decree-holder had submitted to him that he now intended to proceed against the bakasht lands only in execution of his decree. On behalf of the decree-holder, reference was made before the Subordinate Judge to section 4 (a) of the Bihar Land Reforms Act which provides that on the vesting of the estate in the State Government, the estate shall vest absolutely in the State free from all incumbrances and such proprietor or tenure-holder shall cease to have any interest in such estate or tenure other than the interest expressly saved by or under the provisions of the Land Reforms Act and to sections 5 and 6 of that Act which are the saving sections. Under section 6, a provision has been made for the saving of the proprietor's private lands from vesting absolutely in the State Government as such lands are statutorily settled with the intermediary who was in possession of the land and he is entitled to retain possession thereof and hold it as a raiyat under the State having occupancy right in respect of such land subject to the payment of rent. Hence, the learned Subordinate Judge found that the decree-holder was entitled to proceed against the bakasht lands in execution of his decree as the bakasht lands had been saved from vesting absolutely in the State and were permitted to be retained by the intermediary who was in possession of them. The objection raised by the judgment-debtor was, therefore, rejected. The present appeal was brought to this court from that order of the learned Subordinate Judge.

32. Mr. Baldeva Sahay appearing for the judgment-debtor appellant contended that the order of the learned Subordinate Judge is erroneous. He argued that the interest of the mortgagee and the proprietor's interest having been transferred to the State, the mortgage is extinguished, and the only remedy left to the mortgagee is that as provided for in section 14 of the Land Reforms Act and he has no right to sue on the basis of his mortgage. He has contended that what is now left, after the vesting of the estate in the State Government, is, under section 6 of the Land Reforms Act, the raiyati interest, the other interest of the mortgagor having vanished, and the raiyati interest was not subject matter of the mortgage. Thus the subject-matter of the suit must now be held to be the raiyati interest under the provisions of section 6 of the Land Reforms Act and this cannot be made available to the decree-holder. It was further contended that the present case is covered by section 4 (d) of the Land Reforms Act which reads as follows :

> "No suit shall lie in any Civil Court for the recovery of any money due from such proprietor or tenure-holder the payment of which is secured' by a mortgage of, or is a charge on, such estate or tenure and all suits and proceedings for the recovery of any such money which may be pending on the date of vesting shall be dropped."

33. Mr. Lal Narain Sinha, who appeared for the respondents, submitted, on the other hand, that the mortgage cannot be said to have been destroyed as a result of the vesting of the estate under

the Land Reforms Act. It became inoperative upon such properties as they no longer belonged to the mortgagor. With regard to section 4 (d) of the Land Reforms Act, it was argued that it only provides that the suit or proceeding shall be dropped in respect of the estate as such which has vested in the State and that the provisions of that section have no application to properties which still remained with the mortgagor. He resisted the contention of the appellant that section 14 of the Land Reforms Act is the only remedy now left with the creditor. According to Mr. Lal Narain Sinha's argument it is open to the creditor either to make use of the provision of section 14 of the Land Reforms Act or to execute his decree by pursuing the property of the mortgagor which has not vested in the State.

34. I think the contention of Mr. Lalnarain Sinha is well-founded and must be accepted as correct. That section 4(d) of the Land Reforms Act has not the effect of destroying the entire mortgage and does not bar the entire remedy of the mortgagee is plain enough. It is well to remember that this Act deals only with the interests of proprietors or tenure-holders. So far as the occupancy holdings of raiyats are concerned, they are outside the scope of this Act. Now, suppose a person has borrowed money on the security of 100 bighas of his kasht land and a fractional share of proprietary interest which fetches only a nominal income. On the enforcement of this Act the proprietary interest will now vest in the State. The occupancy holdings, however, will remain with the tenants. Now can it be said that the mortgagee cannot enforce his mortgage against the raiytai lands; I think the answer is an emphatic no. There is nothing in this Act, to bar the remedy of the mortgagee to enforce his mortgage against the raiyati lands. It is true that the proprietary share is no longer available by virtue of section 4 (d) since the estate has vested in the State free from encumbrances. There is no law, however, to debar a mortgagee from realising his mortgage debt from the lands which did not vest in the State under the provisions of the Act. In such a situation one cannot force the mortgagee to seek his remedy as provided in section 14 of the Land Reforms Act and to satisfy his mortgage debt out of the compensation payable under the Act. It is sufficiently obvious that in such a case the option rests with the mortgagee either to proceed against the property not covered by this Act or against compensation payable under this Act in the manner laid down therein. It is for him to decide what course will best serve his purpose. But, I see no warrant for the contention that he must be forced to pursue the remedy provided in the Act. The resultant injustice from such a construction is too clear to require a detailed discussion. If I am correct in this view, there is no reason why the mortgagee will be debarred from pursuing his remedy against the lands which were part of the estate but has been statutorily settled with the proprietor or tenure holder by virtue of section 6 of the Act. If the mortgage security consists of an estate yielding cash income and comprising bakasht lands, there is no reason why the mortgagee will be forced to confine his remedy only to the compensation payable and not to enforce the mortgage against the Bakasht lands simply because on the vesting of the estate they changed their character and constituted the raiyati lands of the ex-proprietor or ex-tenure holder. In principle, I sec no difference between bakasht lands as such and the lands which were originally raiyati lands. It is true that under sections 3 and 3A the entire estate or tenure vests in the State of Bihar absolutely and not only the right, title and interest of the proprietor or tenure holder: vide *S. N. Chaudhury v. State of Bihar*[11], (J). But the word Vest' does not imply that after the date - of vesting no interest at all is left with the ex-proprietor or ex-tenure holder. What actually vests is the subject matter of section 4. It deals with the consequences which ensue on the vesting of the estate. It provides that the estate shall with effect from the date of vesting vest absolutely in the State free from all encumbrances. This general provision is subject to qualification enacted in clause (a) of section 4. This clause provides

further that the proprietor or tenure-holder after the vesting shall cease to have any interest in the estate or tenure, other than the interests expressly saved by or under the provisions of this Act. One of the interests saved is what is laid down in section 6 of the Act, namely, that Bakasht lands will continue to remain in possession of the ex-proprietor or ex-tenure holder, but not in the character of bakasht lands but as raiyati lands. They will cease to be proprietors and they will be regarded as raiyats of such lands from or after the date of vesting. Therefore, the combined effect of sections 3, 3A, 4 and 6 is that the lands in cultivating possession of the intermediaries do not vest absolutely in the State but remain with the intermediaries and will be deemed to be settled with them. In other words, since after the date of vesting they will hold such lands not as proprietors or tenure holders but as raiyats the State will not be entitled to resume khas possesssion of such lands notwithstanding the fact that the estate has vested as provided in sections 3 or 3A and 4 of the Act. The right of the State is restricted only to realisation of rent that may be assessed on such lands in accordance with the provisions of the Act. The net result is that such bakasht lands remain with the proprietors although in an altered character. Can it be said that the mortgage in respect of such lands stands extinguished under section 4(d) ? I do not think, such a result follows from the provisions of the Land Reforms Act. If that were so, it will give rise to monstrous results. It is conceivable, and instances are numerous, that the estate may comprise of only bakasht lands. It is not necessary for the constitution of an estate that there must be tenants therein.

35. Now, if a person has only bakasht lands say, 100 bighas in area, and if he mortgages the entire bakasht lands to secure a loan of Rs. 1,00,000/-then if the construction put by Mr. Sahay were correct, the entire remedy of the mortgagee to recover the money will be barred. The mortgagee will not be entitled to recover anything from the mortgagor, for the simple reason that for such lands there is hardly any compensation. The Act was not intended to benefit the mortgagor-proprietor or tenure holder and to destroy the rights of the mortgagee altogether. It is true that the character of the land is changed from ownership into limited ownership of a raiyat, but there is no reason why the mortgagee will not be entitled to follow even this limited interest that has remained with the mortgagor. The provision for the recovery of the mortgage money out of the compensation has been made for the benefit of the mortgagee. It is intended to give him a right to recover in such cases his mortgage money out of the compensation. If, however, there are other properties in mortgage, the Act does not say that those properties will not be available for the recovery of the mortgage money. The main purpose of the Act is to facilitate acquisition of the estate free from all encumbrances. If the mortgage does not stand in the way of the acquisition of the estate, as in the given illustration, then there is no valid reason why the mortgage should not operate upon that part of the mortgage security which remained in possession of the mortgagor after the date of vesting. Section 4(d) bars a suit in a Civil Court for the recovery of any money due from such proprietor or tenure holder the payment of which is secured by a mortgage of, or is a charge on such estate or tenure. What is the significance of the expression "such estate or tenure"? The acquisition of the estates or tenures by the State is the subject matter of sections 3 and 3A. Both of them provide that on publication of the prescribed notification the estates or tenures become vested in the State. The word "vest", however, does not imply that the entire estate or tenure vests absolutely in the State without reservation of any interest in favor of the ex-proprietor or ex-tenure holder. This is made perfectly clear by section 4 which deals with the consequences of the vesting of the estate or tenure in the State. It provides, inter alia, that such estate or tenure (namely, the estate or tenure which has vested under the provisions of Section 3 or 3A) shall, with effect from" the date of vesting, vest absolutely in the

State free from all encumbrances, and such proprietor or tenure holder shall cease to have any interest in such estate or tenure, other than the interest expressly saved by or under the provisions of this Act.
It is quite clear that the vesting of the estate or tenure does not destroy all the rights which the proprietor or tenure holder had in the estate or tenure, as the case may be. Some rights have been reserved to them under this Act. One of the rights so reserved is provided in section 6. It lays down that "all lands used for agricultural or horticultural purposes, which were in khas possession of an intermediary on the date of such vesting; ....shall, notwithstanding anything contained in this Act he deemed to be settled by the State with such intermediary and he shall be entitled to retain possession thereof and hold them as a raiyat under the State having occupancy rights in respect of such lands subject to the payment of such fair and equitable rent as may be determined by the Collector in the prescribed manner...." It is clear, therefore, that notwithstanding the vesting of the estate the landlords will be entitled to retain possession of the lands as envisaged in section 6, but with this difference that they will hold such lands not as proprietors or tenure-holders but as raiyats under the State on payment of such fair and equitable rent as may be determined by the Collector in the prescribed manner. Their possession of such land is, therefore, confirmed, and the State is given the right only to recover from them the rent assessed upon such lands.
Now a reference to section 4(d) will show that the remedy of the mortgagee to recover the mortgage money by a suit in a civil court is barred only when the payment is secured by a mortgage of or is a charge on, such estate or tenure. The words "such estate or tenure" have reference to sections Section 3A, and 4 and obviously mean the estate or tenure which has vested absolutely in the State minus the interests expressly saved by or under the provisions of this Act, in the present case, expressly saved by section 6 of the Act. The reasons seem to be obvious. The entire object of the enactment is not to determine the rights of the mortgagor or the mortgagee in general but only with respect to the estate or tenure which has been acquired by the State and with which the proprietor or the tenure holder had no concern whatsoever. In other words, the interests which are expressly reserved to the proprietors or tenure-holders under the provisions of this Act are not affected by section 4(d), with the result that the mortgage in respect of such interests will remain intact. In my considered opinion, the effect of section 4(d) read with sections 3 and 6 of the Act is not to destroy the mortgage in its entirety, but only with respect to that part of the estate which has vested absolutely in the State and no interest therein is left with the mortgagor-proprietor or tenure-holder. In other words, the mortgage remains operative so far as the lands covered by the provisions of section 6 are concerned as also the lands not coming within the mischief of the Act such as the original raiyati lands.

36. Judged in this light, I think the decision of this court in the case of *Raghubir Saran Rastogi v. Kaviraj Basudevanand*[12] is right and furnishes complete answer to the contention raised by Mr. Sahay, and any other decision which is contrary to the construction I have put upon section 6 and to the ruling in that case, in my opinion is not correct; the facts of that case are somewhat complicated, but I shall indicate briefly what they are. The proprietors of Mahal Gaddi Masnodih executed a mortgage deed with respect to three annas and three pies share of that Mahal in favour of the Chotanagpur Banking Association. The mortgage was later assigned in favour of one Brij-raj Rastogi, father of the appellant. It appears that thereafter the Central Government acting under the powers conferred upon them by rule 75A (2) of the Defense of India Rules acquired sixteen annas share of four of the villages of the Mahal. Later on, the assignee of the mortgagee instituted a mortgage suit in the court of the Subordinate Judge of Hazaribagh. A preliminary

decree was passed against the judgment-debtors D. N. Banerji, U. N. Banerji, Shamlal Ram Surekha and Narhari Gir. Narhari Gir executed a sale deed in favour of Kaviraj Basudevanand with respect to three annas and three pies share of the Mahal. It was admitted that this Narhari Gir was competent to do. A final decree in the mortgage suit was later passed on 26-1-1946. During the pendency of the suit, there was a reference under section 19 of the Defense of India Act with respect to the four villages acquired by the Central Government, and an award of Rs. 4,52,000/- was granted as compensation to the proprietors in the year 1944. The defendants in the mortgage suit brought an appeal to the High Court against the preliminary decree. The appeal was dismissed with the modification that the decree holder was to proceed in the first instance against the compensation money payable by the Government in respect of the acquisition of the four villages. Then Kaviraj Basudevanand put the award into execution under Order 21, rule 15, Civil Procedure Code, in the court of the District Judge of Patna. The amount of Rs. 4,52,000 was deposited by the Government in this execution case in favour of Kaviraj Basudevanand in 1950; the decree-holder, Raghubir Saran Rastogi, took out execution of the final mortgage decree in the court of the Subordinate Judge of Hazaribagh, and the Subordinate Judge held that the decree was not executable against the compensation money payable by the Central Government for the four villages. Then an appeal was brought by the decree-holder to the High Court. The High Court allowed the appeal and held that the decree could be validly executed against the compensation money. The decree-holder then moved the Subordinate Judge of Hazaribagh who issued a precept to the District Judge of Patna for attachment of the amount of Rs. 83,000 which was the proportionate compensation for the three annas and three pies share which had been actually mortgaged. At this stage an important event happened, namely, that a notification was issued by the State Government under section 3 of the Bihar Land Reforms Act declaring that the entire mahal, Gaddi Masnodih, had passed to and become vested in the State. This notification was published in the Gazette on 27-10-1952. Subsequently, Kaviraj Basudevanand moved the District Judge of Patna stating that the mortgagee decree-holder could not attach the amount of Rs. 83,000 lying in deposit, and that section 4 (d) of the Bihar Land Reforms Act was a bar to the execution. The District Judge of Patna rejected the prayer holding that section 4 (d) of the Bihar Land Reforms Act did not apply to the execution case and that the precept of the Subordinate Judge should be complied with. Two days later, the same question was canvassed before the Subordinate Judge of Hazaribagh who took an opposite view, namely, that section 4 (d) of the Bihar Land Reforms Act was a bar to the execution of the mortgage decree, and, therefore, the execution proceeding should be dropped. It was against this order that an appeal was brought to the High Court.

37. Thus the question in issue in this appeal was whether section 4 (d) of the Bihar Land Reforms Act was a bar to the attachment of the sum of Rs. 83,000 in execution of the final mortgage decree. It was argued on behalf of the appellant that it was not a bar. The argument for the respondents, however, was that the mortgage decree and the execution proceeding referred not merely to the compensation money but also to estates notified under section 3 of the Bihar Land Reforms Act and that, therefore, the payment of the money was partly, though not in whole, secured by mortgage of vested estates and the case fell within the purview of section 4 (d) of the Land Reforms Act. Section 4 (d) of the Land Reforms Act has already been quoted above. This section must be read along with section 3 (1) of that Act. Section (1) enacts that the State Government may, from time to time, by notification, declare that the estates or tenures of a proprietor Or tenure-holder, specified in the notification, have passed to and become vested in the State. Section 4 then deals with the consequence of the vesting of the estate or tenure in the State.

Thus, the provision of section 4 (d) must be referable to the estates or tenures of a proprietor or a tenure-holder which have passed to and have be. come vested in the State.

38. This Court held in the above mentioned case that grammatically the language of section 4(d) may admit of the interpretation contended for the respondents, but the consequence of such an interpretation would be startling and unjust. Therefore, it was necessary to put some limitation on the general language of section 4 (d) of the Bihar Land Reforms Act. Then it was observed :

> "The principle is that the section must be construed in the background of a particular subject-matter of the statute. To put it in other words the wide meaning of the section must be cut down and restricted with reference to the scope and object of the statute. In the classic words of Brett, M. R. it is not because the words of a statute or the words of any document read in one sense will cover the case that that is the right sense.

Grammatically they may cover it; but whenever you have to construe a statute or document you do not construe it according to the mere ordinary general meaning of the words, but according to the ordinary meaning of the words as applied to the subject-matter with regard to which they are used... *Lion Insurance Association v. Tucker*[13], (L)." That principle having been applied, it was held that in section 4 (d) the Legislature intended to deal with estates or tenures which had vested in the State under section 3 and that the object of section 4 (d) was that no suit should be instituted so far as the vested estates are concerned and any suit or proceeding already instituted should be dropped so far as the vested estates are concerned. Then it was observed that the language of section 4 (d) must be given a limited meaning with reference to the scheme of the statute and the conclusion reached "was that:

> "Section 4 (d) must be interpreted to mean that no suit shall be brought in any civil court for the recovery of the mortgage money or money secured by a charge so far as the vested estates are concerned and if a suit or proceeding is already instituted, such suit or proceeding shall be dropped so far as the vested estates are concerned." Then further:
> "To put it differently, section 4 (d) will not be applicable to a case where money is secured by a mortgage or charge on estates, some of which are notified under section 3 of the Act and others are not so notified. In such a case section 4 (d) will be a bar to the suit or execution proceeding so far as the vested estates are concerned, but the creditor will be entitled to prosecute the suit or execution proceeding as regards the estates or portions of estates which are not vested in the State." There is another matter which was decided in that case and which ought to be referred to. The argument on behalf of the respondents was that if a limited construction is placed upon section 4 (d), the creditor could prosecute his remedies in two jurisdictions which would come into conflict. The creditor would be entitled to execute a mortgage decree in the civil court as regards the properties which are not vested in the State, but as regards the properties which are vested in the State the creditor would file a claim under section 14 before the claims officer, and if the creditor files such a claim, the claims officer is authorized under section 16 to re-open the decree and to take a fresh account and scale down interest to the extent authorized by that

section.

The contention was that the creditor could not be permitted to execute the decree of the civil court and at the same time the claims officer could not re-open the decree for the purpose of determining the claim of the creditor with respect to the estates notified under section 3. It was argued that the intention was that the creditor must prosecute his claim before the claims officer and that the remedy in the civil court was barred. On a consideration of the various provisions of the Bihar Land Reforms Act it was held as follows :

> "It is open to the creditor to make an election' as to the choice of his remedies in a case of this description. It is open to him either to give up his right of filing a claim under section 14 with respect to the vested estates and to prosecute the suit or execution proceeding exclusively in civil court On the other hand, the creditor may give up his remedy in the civil court and prosecute his claim solely under section 14 before the claims officer who will proceed under section 16 to re-open the decree and to grant necessary relief.

If sections 14 and 16 are construed in this manner, there would be no occasion for conflict of jurisdiction between the claims officer acting under section 16 and a civil court hearing a mortgage suit or executing a mortgage decree. If this interpretation of sections 14 and 16 is adopted, there would be no insuperable difficulty in holding that section 4 (d) of the Act refers only to a case where the mortgage or charge exclusively relates to the estates which are notified under section 3 and which have become vested in the State of Bihar." Thus, the conclusion was that section 4 (d) did not operate as a bar to the execution of the mortgage decree and that the appellant decree-holder was entitled to obtain an order of attachment against the sum of Rs. 83,000 which was the amount of compensation for the four villages acquired by the Central Government under the Defense of India Rules.

39. Mr. Baldeva Sahay has not questioned the correctness of the decision in the case of *Raghubir Saran Rastogi v. Kaviraj Basudevanand* (K). He stated, however, that this case is distinguishable from the present case before us and he has relied in support of his argument upon the case of *Sm. Gauri Kumari Devi v. Krishna Prasad*[14], The decision in Rastogi's case was cited before the learned Judges who decided Sm. Gauri Kumari Devi's case, but their Lordships said that the facts of the case before them were distinguishable and, therefore, they did not apply the decision in Rastogi's case to the case before them. In my opinion, there is no valid ground of distinction between the case of Raghubir Saran Rastogi and the case of Sm. Gauri Kumari Devi (M).

40. In Smt. Gauri Kumari Devi's case, the short facts were these. The judgment-debtor was the petitioner before the High Court. She had executed a mortgage in favour of the decree-holder, the opposite party, and had hypothecated 10 annas and 8 pies share of hers in tauzi No. 11912 lying in the district of Patna. Later, on a suit brought upon the mortgage, a preliminary mortgage decree was passed and thereafter a final decree. Before, however, steps could be taken for execution of the mortgage decree, the property under the mortgage became vested in the State of Bihar under the provisions of the Bihar Land Reforms Act. Hence the decree-holders applied for the transfer of the decree to the court at Gaya and on obtaining a certificate of non-satisfaction put it into execution against some non-hypothecated properties in the court of the Subordinate

Judge at Gaya. The judgment-debtor filed an objection on the ground that the execution could not proceed against any of the non-hypothecated properties as no personal decree under Order 34, rule 6, Civil Procedure Code, had so far been obtained against her. This gave rise to a miscellaneous case which was taken up ex parte and decided in favour of the judgment-debtor. The case of the decree-holders was that this order was passed behind their back and that when they came to know of it, they filed an application for the review of that order and in that application it was held that the execution levied against the non-hypothecated properties of the judgment-debtor was maintainable in law. It was against this order that the judgment-debtor came up to the High Court in civil revisional jurisdiction. It had been held by the court below that a personal decree had already been passed against the judgment-debtor along with the mortgage decree and though by oversight the important clause in the judgment relating to the personal decree was not incorporated in the decree under execution, it was open to the executing court to read the decree in the light of the judgment and then to allow the decree-holder to enforce the personal liability, as provided in the judgment by taking execution against the non-hypothecated properties of the judgment-debtor. As will appear from the judgment, Mr. Lalnarain Sinha had raised two points on behalf of the judgment-debtor and they were : (1) that the order was wrong on merit, ana (2) that no review lay against the order originally passed in the court below; and it was in support of these two contentions that Mr. Lalnarain Sinha had argued on behalf of the judgment-debtor. The question of the application of section 4 (d) of the Bihar Land Reforms Act was, as stated by him before us, not raised by him but the learned Judges considered that, though Mr. Lalnarain Sinha,
should fail on the points raised by him, he could succeed by reason of the application of section 4 (d) of the Bihar Land Reforms Act. I am not concerned with the points raised by Mr. Lalnarain Sinha in that case, but it is necessary to examine the view which the learned Judges took of section 4 (d) of the Bihar Land Reforms Act. After quoting section 4 (d) of the Act, Ahmad, J., with whom Choudhary, J. agreed, stated as follows :

> "In my opinion the case, where all the properties under a mortgage or charge have under the Land Reforms Act vested in the State of Bihar, is fully met by the language of the section, though it has to be conceded that this section, so far as it is applicable to a case where the properties under mortgage or charge are many and out of them only some have vested in the State of Bihar and some are still intact, is not at all free from difficulties. Here, however, we have to deal with a case where the entire property under the mortgage has by now vested in the State of Bihar.

Therefore, for the decision of this case those factors which may have to be weighed in dealing with the former class of cases, are not relevant nor necessary to be discussed here. As I read the Land Reforms Act, I find that it places two major and independent restrictions on the rights of an encumbrancer who has advanced money on the security of properties which however thereafter vested in the State of Bihar under that Act. The one is provided in section 4 (a) and the other in section 4 (d) of that Act."

41. With regard to the decision in the case of *Raghubir Saran Rastogi v. Kaviraj Basudevanand,* Ahmad, J. thus observed :

> "The decision deals with a case where money had been secured by a mortgage or charge

> on a number of properties, some of which thereafter vested in the State under section 3 of the Bihar Land Reforms Act and others were still intact. On those facts Ramaswami, J. (as he then was) in that case held that the bar of section 4 (d) of the Act is limited to the estates that have vested in the State and does not extend to the estates or portions of estates which are not so vested and also that section 14, Bihar Land Reforms Act, is enacted in a permissive form and where the mortgage relates to notified estates and to estates which are not notified, it is open to the creditor to file a suit or to prosecute an execution case in the civil court but he cannot pursue his remedy in the civil court so far as vested estates are concerned. In other words, in such a case, according to the law laid down therein, it is open to the creditor to make an election as to the choice of his remedies". And then he said :
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> "Perhaps this view may be supported on the footing that the money advanced on the security of many properties may in such a case be taken as if it had been advanced either on those properties alone which have vested in the State and in that way the special remedy provided in the Act therefore becomes available to the creditor or exclusively on those properties which have not vested in the State and therefore the general remedy open in law is not affected by any vesting of properties other than those.

Or in such a case the section may perhaps on equitable principles be construed to mean that no suit shall lie in any civil court for the recovery of any money due from a proprietor or tenure-holder to the extent to which its payment is taken to be secured by a mortgage of, or a charge on, his estate or tenure that has already vested in the State and that all suits and proceedings for the recovery of any such money, which may be pending on the date of vesting, shall, to that extent, be dropped. But in any case here, as already stated, we are not faced with a case of that class which was under consideration in *Raghubir Saran Rastogi v. Kaviraj Basudevanand* (K). In the case before us all the properties under mortgage have vested in the State of Bihar. That being so, there is no reason why the plain meaning of section 4 (d) should not be given full effect to ... Therefore, that decision cannot be an authority for any proposition on that point. There are, however, certain observations made in that case which in their wider amplitude may mean to suggest that even in cases where all the properties given under mortgage or charge have vested in the State, the remedy by a suit in the civil court for a personal decree against the debtor is not barred under section 4 (d) of the Act." And with regard to this portion of the judgment in the case of Raghubir Saran Rastogi (k) their Lordships thought that it was obiter dicta. Hence they did not consider that they were bound to follow that decision. Ahmad, J. also observed in these words:

> "Then it cannot be disputed that unless the general remedy by suit in a civil court for the realisation of the money advanced on the security of the property vested in the State under the Act is completely barred, that scheme cannot be made effective. Therefore, any interpretation of section 4 (d) to mean that no suit shall be brought in any civil court for the recovery of the mortgage money or money advanced by a charge so far as the vested estates are concerned or that if a suit or proceeding is already instituted such suit or proceeding shall be dropped so far as the vested estates are concerned will not only be inconsistent with the scheme as is provided in sections 14 (1), 16 and 24 (5) of the Act but

will stand in negation of it." Finally, he said :

"Section 4 (d) of the Land Reforms Act on vesting in the State of all properties given in mortgage under the document stands as a bar against any proceeding in civil court for the realisation of the money advanced to the outgoing landlord on the security of those properties. In this view of the matter, I hold that the court of execution was right in passing the order which it did on 23-12-1954, and at least on merit the order passed contrary to it on 20-4-1955, is not consistent with section 4(d)." Thus a view contrary to what was expressed in Raghubir Saran Rastogi's case, was taken in this case. And another important point to notice is that in this case a different view was taken on the question of election also from the view taken in two earlier cases, namely, 1953 BL JR 563, and *Nihar Ganguli v. Anath Nath Basu*[15],

42. On the question of election, therefore

Cases Referred.

[1]1957 BL JR 715
[2] F. A. 460 of 1950, D/-14-02-1958: (since reported in AIR 1958 Pat 626)
[3] AIR 1952 Pat 314
[4]1865 QB 1
[5]44 Ind App 30
[6] AIR 1951 Pat 566
[7](1884) 13 QBD 878
[8] F.A. No. 460 of 1950, D/-14-2-1958: (AIR 1958 Pat 62)
[9] F.A. No. 205 of 1948 D/-14-1-1958
[10] AIR 1936 Pat 420
[11]1957 BL JR 72 (FB)
[12]1953 B. L. J. R., 563
[13](1883) 12 QBD 176 at p. 186
[14]1957 BL JR 201
[15]1956 BL JR 177