NAGPUR HIGH COURT

Chhote Khan

Vs

Mohammad Obedulla Khan

Second Appeal No. 126 of 1947

(Sinha, C.J., Hidayatullah and Mudholkar, JJ.)

24.03.1953

JUDGMENT

Hidayatullah, J.

1. The question raised in these cases is whether as a result of the passing of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (Act I of 1951), the plaintiffs (who are mostly respondents) can still claim to continue the 'lis'. In almost all these cases the landlords have succeeded in the Courts below. No third party procedure was followed in these appeals and revisions. The appellants did not seek to join the State Government; nor did the State Government come forward by itself. At an earlier hearing I suggested that course but was overruled. We have, however, heard the Advocate-General but without joining the State Government.

2. The result is that the original plaintiffs are on the record opposed to the appellants or applicants, but it is claimed against them that they have no 'locus standi' to continue the 'lis'. The Act in question is not retrospective either expressly or by necessary intendment. Indeed, the intendment is all the other way even if an Act expressly operating from a future date can be said to be retrospective. The Act professedly does not touch rights in existence prior to the appointed day and nothing is said about pending litigation. It cannot be denied that when these suits were instituted and also when the impugned judgments now under appeal or revision were rendered, the plaintiffs had 'prima facie' a good cause of action. These appeals have been pending in this Court for as many as six or seven years due to congestion of work.

3. Since the Act does not purport to deprive the plaintiffs of the right of action which they had before, nor the rights which the judgments have given them, the appellants can only apply to bring in the State Government either in place of or in addition to the landlords. The State Government can also apply to join in the litigation. The Act says that on and from a particular date the landlords' interests vest in the State Government provided compensation is paid for those interests. In effect, the State Government has paid for those interests and is thus the successor to those interests. Whether the right of suit or the interest in a judgment rendered but under appeal has also passed to the State Government was not put in issue before us because no third party

procedure was followed. For the landlords the question is not merely one of right in the property but also in the judgments and the costs awarded and mesne profits where such claim can legitimately be made or has been made. The correctness of the judgments under appeal must at least be decided for the determination of those questions.

4. The defendants claim that they must succeed, not on merits, but because the rights which the landlords enjoyed till the appointed day have been lost to them during the pendency of these appeals and revisions. But there is no corresponding accession of any right to the defendants either under the Act or otherwise. Their position, status and rights have remained unchanged. They say that they would deal with the State Government. But this can only be if they can remain on the land and before their rights to do so (if any), they must establish that the judgment which says that they have no such right is wrong. They cannot succeed merely because the landlords have lost their property while these appeals were pending in this Court.

5. The defendants are doing no more than pleading a 'jus tertii'. While such a plea can effectively be taken in a suit for ejectment, 'jus tertii' is no defence, unless the defendant can show that the act complained of was done by the authority of the true owner: See - *'Narayana Row v. Dharmachar[1]', - 'Graham v. Peat'[2], - 'Chambers v. Donaldson[3]',* and - *'B. Gangayya v. V. Satyanarayana[4]',*

6. The State Government did not authorise the acts of the several defendants when the cause of action arose, nor is there anything to show that the State Government has approved of those acts or ratified them even today. The question of settling with the Government can arise after the appellants have succeeded in getting rid of the judgments against thorn. The appellants cannot pretend to succeed in these appeals because, if they do, they would be able to so settle with Government.
This argument involves the fallacy of 'a dicto secundum quid ad dictum simpliciter' which as Mill said:

> "is committed when, in the premises, a proposition is asserted with a qualification, and the qualification lost sight of in the conclusion; or, oftener, when a limitation or condition, though not asserted, is necessary to the truth of the proposition, but is forgotten when that proposition conies to be employed as a premise." (Chap.VI, Book V, System of Logic).

It is pertinent to ask also "what if they are trespassers and not purchasers for consideration which is the only fact provided for in the Act?"

7. A long track of decisions has settled that an action must be tried in all its stages on the cause of action as it existed at the commencement of the action: see - *'Moon v. Durden[5]', - 'Doolubdass v. Ramloll[6]', - 'Midland Railway Co. v. Pye[7]', - 'Delhi Cloth and General Mills Co. Ltd. v. Income Tax Commissioner, Delhi[8]', - 'Venugopala Reddiar v. Krishnaswami Reddiar', AIR 1943 PC 24* and –

[1]26 Mad 514 [3](1809) 11 East 66 [5](1848) 2 Ex 22
[2](1801) 1 East 244 [4] AIR 1925 Mad 1021 [6]5 Moo Ind App 109 (PC)
[7](1861) 10 CBNS 179
[8] AIR 1927 PC 242

'McCullough v. Commonwealth of Virginia[9]', among a host of others. No doubt, Courts 'can' and

sometimes 'must' take notice of subsequent events, but that is done merely 'inter partes' to shorten litigation but not to give to a defendant an advantage because a third party has acquired the right and title of the plaintiff. The doctrine itself is of an exceptional character only to be used in very special circumstances. It is all the more strictly applied in those cases where there is a judgment under appeal.

8. The law on this subject was stated by Sir Asutosh Mookerjee, J., in a series of cases in the Calcutta High Court but the leading pronouncement (per Schwabe, C.J., in - *'Kanniappa Chettiar v. Ramachandraiyar*[10]*',* and per Fazl Ali, J., in - *'Harihar Gir v. Karu Lall*[11]*',* is reported in - '*Rai Charan v. Biswa Nath*[12]*',* In that case the law was elaborately examined by that eminent Judge and he laid down that merely because the plaintiff loses his title 'pendente lite' is no reason for allowing his adversary to win. if the corresponding right has not vested in the adversary but in a third party. That case is a complete answer to the present question and has been consistently followed in India without dissent to this day.

9. Since Mookerjee, J's., dictum is decisive of this controversy, I shall presently quote from it; but it is not the only authority for the proposition I am adopting. If I were to give a list of cases in which the plaintiff after losing his title or status or both, and being thus deprived not only of the ownership but also the right to possession of the suit property has been allowed to continue the litigation particularly after a valid judgment in his favor, it would be a very long one. Reference may, however, be made to - '*Sakharam v. Krishna*[13]*',* - *'Narayanaswamy Naidu v. Ramayya*[14]*',* - '*Joti Lal v. Sheodhayan*[15]*',* - '*Govinda v. Perumdevi*[16]*',* - '*Wamanrao v. Rustomji*[17]*',* - *'Radhay Koer v. Ajodhya Das'*[18]*,* - '*Lilabati Dasi v. Chitpore Golabari Co*[19]*.',* - *'Rash Behari v. Jaipergash Pandey*[20]*',* - *'Bipin Behari v. Official Receiver*[21]*',* - '*Mt. Nandan v. Wazlra*[22]*',* - '*Fateh Singh v. Bahab Shah*[23]*',* - '*Viswanathaswami Devasthan v. Koodalinga Nadan*[24]*',* - *Gordhandas v. Bhagwandas*[25]*',* and - '*Maung Ba Thaw v. Ma Saw May*[26]*',*

10. In the case before Mookerjee, J., referred to in the preceding paragraph, the plaintiffs had sued for recovery of possession of land with mesne profits on declaration of title. The trial Court dismissed the suit but on appeal the decision was reversed. In the appeal before the High Court the point was raised that "as the interest of the plaintiffs in the property claimed was sold 'pendente lite'." the suit should be dismissed. Mookerjee and Beachcroft, JJ., summarised the argument thus:

> "The contention in substance is that a decree for recovery of possession cannot properly be made in favour of persons who, at the time the decree is made, are found to have lost all interest in the property claimed by them. In our opinion there is no foundation for this proposition." The learned Judges then observe:
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> "The defendants are consequently restricted to the contention that although the

[9](1898) 172 US 102
[10] AIR 1924 Mad 731
[11]AIR 1935 Pat 488
[12] AIR 1915 Cal103
[13] AIR 1931 Nag 4 (FB)
[14] AIR 1915 Mad 613
[15] AIR 1936 Pat 420
[17]21 Bom 701
[19] AIR 1938 Cal 481
[16]12 Mad 136
[18]7 Cal LJ 262
[20] AIR 1934 Pat 21 at p.23
[21] AIR 1921 Cal 422
[23] AIR 1927 Lah 128
[25] AIR 1933 Sind 232
[22] AIR 1927 Lah 198
[24] AIR 1928 Mad 246
[26] AIR 1942 Rang 13 (Zl)

> title of the plaintiffs to the land at the date of the suit may be established, relief should not

be granted to them by way of recovery of possession and that such relief can legitimately be awarded only to persons who have succeeded to the interest of the plaintiffs. For this proposition no authority has been cited. On the other hand, the argument tested from the point of view of principle as well as convenience, seems obviously unreasonable."

11. Their Lordships then make a reference to Order 22, Rule 10, Civil Procedure Code, and observe that the person on whom the right has devolved can come in if he cares, but if he does not then he would be bound by the decision in the case. Their Lordships then observe:

> "But the legislature has not further provided that in the event of devolution of interest during the pendency of a suit, if the person who has acquired title does not obtain leave of the Court to carry on the suit, the suit would stand dismissed. It is also plain that if the person who has acquired an interest by devolution, obtains leave to carry on the suit, the suit in his hands is not a new suit, for as Lord Kingsdown said in - *'Prannath v. Rookea Begum*[27]*',* a cause of action is not prolonged by mere transfer of the title. It is the old suit carried on at his instance and he is bound by all proceedings up to the stage when he obtains leave to carry on the proceedings : - *'Rajaram Bhagwat v. Jibai*[28]*',* and - *'Gokul Chand v. Sarat Chandra*[29]*',*

If this view were not maintained, what would be the result? The suit commenced by the plaintiff stands dismissed. The person who has acquired right, title and interest of the plaintiff, commences a fresh suit. His cause of action is the original cause of action upon which the first plaintiff commenced his suit. It may consequently happen that while the plea of limitation would have been of no avail in answer to the claim of the original plaintiff, it may be very effective as an answer to the subsequent suit. It may also be asked, if the contention of the appellants were to prevail, what would happen in the event of a devolution of the interest of the defendants? Would the suit be heard 'ex parte', because the interest of the defendants had passed to a stranger to the litigation or would the suit stand dismissed because it was at that stage a suit against a person who had no interest in the litigation? If the contention of the appellant were upheld, there would obviously be endless litigation and, the substantial rights of litigants might be completely defeated. It is also worthy of note that at the stage when the objection is taken, neither the Court nor the parties may be in a position to decide that there has been a final and operative devolution of interest."

Finally, according to the learned Judges, except in cases in which the suit can be stayed for some valid reason, it must go on. As was observed:

> "It is plain that the trial of the suit should not be arrested merely by reason of the devolution of the interest of the plaintiffs. The successor in interest may, if he chooses, obtain leave of the Court under Order 22, Rule 10; but if he does not do so, the original plaintiffs are entitled to continue the suit and their successors will be bound by the result of the litigation. The consequences will

[27] 7 Moo Ind App 323 at p.353 (PC) [29] 18 All 285
[28] 9 Bom 151

> be that the plaintiffs, if successful, will obtain a decree which will enure to the benefit of their successors."

12. It was argued that this is not a case of "assignment, creation or devolution of any interest" but of expropriation and that the rights of the landlords are 'destroyed'. This argument denotes a misapprehension of what happens when an ex-proprietary Act (like Act I of 1951) comes into force. The expropriation of private property for public purposes '(publica utilitas)' has come to be recognized as a legitimate activity of the State. Grotinus (whose theories may be said to be the foundation) recognized that all ownership in the State is neither individual '(vulgare)' or communal '(eminens)', i.e., available to the community. All individual rights are 'acquired rights' '(ius quaesitum)' but are subject to the States 'eminent 'dominium' which may be exercised 'ex vi supereminentis dominii'. The right of eminent domain is opposed to the acquired rights, but, in a civilized State, gives way to the acquired rights of the subject. Eminent domain can be exercised against private rights but only if some public purpose is involved and the subject is compensated. Expropriation is valid only on proof of these two elements. Expropriation in this sense is no more than a compulsory sale of the acquired rights. The rights of the subject pass to the State and even if the word 'devolution' by itself may not be apt to describe expropriation (and I do not say that it is not) the expression "assignment, creation or devolution of any interest" is wide enough to include expropriation. The rights are not destroyed but pass to the State and it is not impossible for the State to keep those rights distinct.

13. Rule 10 of Order 22 of the Code thus provides the answer and the right to maintain a suit must certainly be regarded as an interest within the meaning of the rule: See - 'AIR 1928 Madras 246', If the State Government does not choose to continue the litigation in its own name and the defendants for reasons obvious enough are not anxious to join the State Government, the fight must go on between the original parties and the ultimate decision would bind the successors. But the defendants cannot claim to succeed simply because the State Government as the successor in interest does not come in.

14. An appeal is undoubtedly a continuation tit the proceedings in a suit but this principle is equally applicable to suits. An appellant is not in any better position than the defendant in a suit. An appellant can only succeed if he shows that the judgment under appeal is wrong and must be set aside. The decree of the first Court does not cease to be binding on the parties during the pendency of the appeals. As I have already pointed out, these cases have been pending in these Courts for six or seven years. The passing of the Act cannot affect those judgments unless the law says so and the appeals must 'prima facie' be considered according to the state of law when the cause of action arose and when the judgments were rendered. As Wort, J., pointed out in - 'AIR 1934 Patna 21 at p.23 (U)':

> "The decision of the Court was that they would adhere to the general principles, that is that they would confine themselves to the circumstances of the case at the time that the judgment in appeal was delivered, and Mookerjee, J., points out that to do otherwise would be to place a premium on the protraction of litigation.

The manner in which Mookerjee, J., expressed it is this:

> "If the opposite view put forward by the respondents were adopted, the consequence would be startling. The right of the parties would depend, not upon the merits of the controversy between them but upon the length of time over which the litigation might be protracted and upon the accidental circumstances whether a subordinate Court has or has not taken an erroneous view of the rights and obligations of the parties.'"

15. Who knows but that on examination some of these second appeals now pending for six or seven years would be found to be incompetent under Section 100, Civil Procedure Code and ought to have been summarily dismissed! But it is contended that we cannot see that and must only read the pleadings and the Act I of 1951! This, in my opinion, is entirely erroneous and is certainly not the law. Subsequent events are noticed to shorten litigation when those events affect the question 'inter partes' as for example: the death of a coparcener 'pendente lite' with a consequent readjustment of the shares (- '*Sakharam Mahadev v. Hari Krishna*[30]*',* and - *'Sangili v. Mookan*[31]*',* plaintiff becoming senior heir uncontestably due to the death of an heir alleged by the defendant to be senior - *'Ahmadji v. Mahamadji*[32]*',* defendant becoming a plaintiff in the same case by reason of the death of the plaintiff or 'vice versa' - "*Rustomji v. Sheth Purushotamdas*[33]*',* 'res judicata' created by a final decision in another suit - '*Balkishan v. Kishan Lal*[34]*',* or the setting aside of an 'ex parte' decree thus affecting a sale pursuant, to that decree - *'Abdul Rahaman v. Sarat Ali*[35]*,* Subsequent events are not noticed to afford one of the parties the advantage of a 'jus tertii' unless the third party comes forward and accepts the claim.

16. The Act under which the rights of the landlords are acquired by the State is designed in such a way as to convert the rights into mere claims for compensation. The duty to make compensation is connected inseparably with the acquisition of the rights by the State. In this scheme of things the defendants have no place. They can pretend to remain on the lands if they win their appeals. That the plaintiffs, even if successful, would have to surrender the lands to the State is neither here nor there. What we are concerned with is whether the defendants who have failed to make out any claim to the property so far can continue in occupation, a judgment against them notwithstanding. That an acquisition by Government cannot disturb the rights 'inter se' of the rival claimants is illustrated by the leading case of - *'Perry v. Clissold*[36]*',* The controversy goes on in spite of acquisition or expropriation. It cannot vanish into thin air. To make him win is tantamount to a gift of a decree by Court without justification.

17. It was contended that these suits were filed by the plaintiffs 'qua' landlords and lambardars and since the plaintiffs have ceased to be landlords and cannot act as lambardars, they cannot continue these suits. The answer to that is that they were

[30] 6 Bom 113 [32] 1 Bom LR 218 [34] 11 All 148
[31] 18 Mad 350 (ZS)) [33] 25 Bom 608 [35] AIR 1916 Cal 710
[36] 1907 AC 73

landlords when the cause of action arose and when the judgments under appeal were rendered. The appeals must be decided on those facts. Further, the suits were not filed in the exercise of the duties of a lambardar. As their Lordships pointed out in - *'Pramada Nath Roy v. Ramani Kanta Roy*[37]*',*

> "The filing of a suit is not a thing which the landlord is, under the Act, required or authorised to do. It is an application to the Court for relief against an alleged grievance,

which the plaintiff is entitled to submit, not by reason of any provision of the Tenancy Act, but under the general law."

What was said by their Lordships can well be said here, and I find no force in the argument.

18. The ruling of their Lordships in - *'Forbes v. Bahadur Singh*[38]*'.* is strongly relied upon against the landlords as also the Special Bench case reported in - '*Krishnapada Chatterji v. Manadasundari Ghosh*[39]*',*). In the former case a Zamindar to whom certain arrears of rent were due sold his zamindary without these arrears of rent and then sued for the rents himself. It was held by the Judicial Committee that the decree obtained by him was a money decree, because he was not the landlord when he brought the suit although he was the landlord when the arrears fell due. In the latter case the principle was applied where the landlord had ceased to be a landlord when he sued out his execution. These cases have always been understood not to lay down a general proposition of law but only an exposition of Section 65, Bengal Tenancy Act. This was pointed out by the Federal Court in - '*Uday Chand v. Samarendra Nath*[40]*',* in the following words :

"In that case, the Judicial Committee of the Privy Council had occasion to consider Section 65, Bengal Tenancy Act, which is in the following terms:

Where a tenant is a permanent tenure-holder a raiyat holding at fixed rates or an occupancy-raiyat, he shall not be liable to ejectment for arrears of rent, but his tenure or holding shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge thereon.' The Board held that the right of sale and the charge given by the section existed only in favour of a person who occupied the position of a landlord and so long as the relationship of landlord and tenant continued. In our opinion, that case does not help the appellant. The decision was on the construction of Section 65, Bengal Tenancy Act. The words used in the section are clearly applicable only when the relationship of landlord and tenant existed on the date of the suit. There can arise no occasion for an ejectment, or a claim to a first charge on a property liable to be sold in execution of a decree for the rent, unless on the date of the suit the parties were a landlord and tenant. In the course of that judgment, certain observations showing that the Bengal Tenancy Act would operate or would govern the rights of the parties when they were landlord and tenant are found, but those observations, as has been repeatedly pointed out, must be read along with the facts of the case. A careful reading of the judgment shows that the Judicial Committee of the Privy Council were dealing only with the effect and interpretation

[37] 35 Cal 331 at p.345 (PC)
[38] AIR 1914 PC 111
[39] AIR 1932 Cal 321
[40] AIR 1947 FC 19

of Section 65. We do not think that that case supports the wide proposition urged on behalf of the appellant. In view of this authoritative pronouncement, it is not necessary to refer to other cases and - 'Forbes' Case ' cannot be extended to cover other facts.

19. The case of their Lordships reported in - *'K.C. Mukerjee v. Mst. Ram Ratan Kuer*[41]*',* is not in point at all. In that case the legislature created a rule of evidence and decision which concluded the question of consent and the Courts were powerless to hold otherwise even in pending cases because the enactment was held to be retrospective and applicable also to pending litigation. In

the present case, the statute has enacted no rule of decision or evidence and the law is not retrospective and does not exclude the operation of Section 5, Central Provinces General Clauses Act. That case is easily distinguishable.

20. In - *'Monghibai v. Cooverji Umersey*[42]*',* a person had executed a mortgage in favour of a firm. Later some of the partners retired assigning their interest in favour of the remaining partners who sued on the mortgage. An objection was brought to the maintainability of the suit and the plaint was amended bringing in the retiring partners as defendants. The judgment was given in favour of all the partners.

Their Lordships observed:

> "No doubt, it is true that parties who have assigned the whole of their interest 'pendente lite' cannot ask for judgment in respect of an interest which is no longer theirs. But it does not follow that their assignees are thereby precluded from recovering. If it were so, no assignments of property during the course of a trial would be possible. Such a contention is, on the face of it, improbable, and it is now dealt with by Order 17, Rule 1 of the Rules of the Supreme Court, which states: 'a cause or matter shall not become defective by the assignment of any estate or title 'pendente lite'.' "

Their Lordships then refer to two English cases and observe that the same rule obtains in India by virtue of Rule 10 of Order 22, Civil Procedure Code. Their Lordships approved of the action in passing the decree only in favour of the person entitled to the whole relief. This case is not an authority for the proposition that the original plaintiff cannot carry on the litigation if the assignee does not come in. The observations relate to the facts and are not to be understood as laying down that the suit should be dismissed.

21. I am of opinion that though an appellate Court which retains control of the judgment, 'can' and 'must' take such action in the light of subsequent events as will shorten litigation, it must preserve the rights of both parties and sub-serve the ends of justice. It cannot, however, allow one of the parties to the litigation to avail itself of the rights of a third party - an utter stranger to the litigation. It would be a different matter if the position of the present appellants improved as a result of the Act, but it

[41] AIR 1936 PC 49

[42] AIR 1939 PC 170

does not. Section 5(a) of the Act merely preserves to the rightful owners belonging to the various categories mentioned therein, the right to continue in occupation of the 'abadi' subject to settlement with the State Government. But that section does not contemplate the case of a person against whom there is a judgment and decree of eviction in existence. This category is not mentioned in that section and there is no principle of law or precedent on which it can be comprehended therein.

22. Lastly I would like to ask that if the law had affected partly the plaintiffs and partly the defendants, would the suits have still gone on, or would it have been said that neither party had a right to be before the Court? When we deprive the respondents of the decrees in their favour, we must have good reasons why the appellants should succeed. If the position of the appellants has

not altered, they cannot be allowed to succeed unless they can show that the judgments under appeal were wrong.

23. It remains to consider the argument of Sari Dabir in the pre-emption cases where, though the decree was passed before the notification, the deposit was made afterwards.

Shri Dabir refers to Section 3(2) of the Act and particularly the words:

> "After the issue of a notification under sub-S.(1), no right shall be acquired in or over the land to which the said notification relates, except.... andc."

It is argued that under Order 21, Rule 14, Civil Procedure Code the title of the pre-emptor commences with the deposit and he acquires the interest after the notification. The section refers to the acquisition of rights by private treaty and not to acquisition by a decree already extant or 'in invitum'. To say that it deprives the successful litigant of the fruits of his decree won after long contest is to make the wrong party the owner and to negative not only the decree but the purpose of the law. The law is designed to obviate last-minute creation of rights by private agreement but is not meant to take away vested rights given by decrees of Courts. I do not read that sub-section in this amplitude because all law must be read to preserve existing and vested rights and there is no compelling reason for departing from this canon of construction.

24. In my opinion, these appeals and revisions must be heard and disposed of. If the State Government joins, well and good; but if it does not, the original plaintiffs will be entitled to continue the litigation and their rights 'vis-a-vis' those of the State Government will have to be worked out not in these appeals, but in some other proceeding.

Mudholkar, J.

25. This judgment will also govern Second Appeals Nos.648 of 1951, 197 of 1947, Miscellaneous (Second Appeals Nos.62 of 1952 and 63 of 1952 and Civil Revision No.577 of 1949.

26. It is said that consequent on the enactment of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (No.I of 1951) the landlord fades out of the picture in all these cases.

27. In Second Appeals Nos.126 of 1947 and 648 of 1951, the landlords' decrees for possession of 'abadi', sites are challenged by the purchasers of the sites. The question which is now raised in these two appeals is whether the appeals should be heard on merits or whether the decrees passed in favor of the landlords should be held to be ineffective and unexecutable.

28. The question which is raised in Miscellaneous Appeals Nos.62 of 1952 and 63 of 1952 is whether the decrees for pre-emption passed in favour of the landlords before the coming into force of the Madhya Pradesh Abolition of Proprietary Rights Act, 1950, could be executed upon applications for execution made after the Act came into force.

29. The question which is raised in Second Appeal No.197 of 1947 is whether a suit brought

before the passing of the Madhya Pradesh Abolition of Proprietary Rights Act, 1950, by a lambardar for possession of certain fields against the co-sharers malguzars in the village without the consent of the lambardar can continue.

30. The question which is raised in Civil Revision No.577 of 1949 is whether a suit for possession of an 'abadi' site which is pending in the Court below upon a cause of action which arose before the commencement of the Madhya Pradesh. Abolition of Proprietary Rights Act can continue after the Act came into force,

31. Apart from the counsel for the parties in these cases, arguments were addressed before us by Shri N.B. Chandurkar and Dr. Kathalay. The questions raised in their arguments were whether a suit for possession of a land instituted by a lambardar before the Act came into force can now continue and also whether a decree passed in favor of a landlord before the Act came into force still subsists or stands vacated.

32. I shall deal mainly with Second Appeals Nos.126 of 1947 and 648 of 1951, because the conclusion reached in regard to them would apply also to the other appeals and the Civil Revision. In these cases, as I have already stated, the landlords have already obtained decrees for possession against the transferees of 'abadi' sites and these transferees have come up in appeal to this Court. On behalf of the latter, it is contended that the position now is that the landlord has ceased to exist, that the State having acquired his right has come in his place and that therefore the landlord has no longer any right to eject the transferee.

33. In order to appreciate the argument it is necessary to examine the provisions of Sections 3(1), 4 and 7, Madhya Pradesh Abolition of Proprietary Rights Act. Section 3(1) provides that save as otherwise provided in the Act, on and from a date to be specified by a notification by the State Government in this behalf, all proprietary rights in an estate, mahal etc. in the area specified in the notification, vesting in a proprietor of such estate, mahal, etc. or in a person having interest in such proprietary right through the proprietor, shall pass from such proprietor or such other person to and vest in the State for the purposes of the State, free of all encumbrances. By virtue of the notification issued under sub-S.(1) of Section 3, the proprietary rights in the whole of Madhya Pradesh, except the four Berar districts, vested in the State on 31-3-1951. The consequences of vesting are set out in section 4 of the Act.

34. Under clause (a) of sub-S.(1) of Section 4, all rights, title and interest vesting in the proprietor or any person having interest in such proprietary right through the proprietor in such area, including the rights to village site, vested in the State as from the date of the notification issued under Section 3(1). Sub-section (2) of Section 4, however, provides that notwithstanding anything contained in sub-S.(1), the proprietor shall continue to retain the possession of his homestead, home-farm land, and in the Central Provinces also of land brought under cultivation by him after the agricultural year 1948-49 but before the date of vesting.

35. Section 7 provides that on the date of vesting, the Deputy Commissioner shall take charge of all lands, other than occupied lands and homestead, and of all interests vesting in the State under Section 3.

36. Other provisions which are relevant in this connection are Sections 5(a), 50, 89 and 8.

Section 5(a) provides, among other things, that subject to the provisions of Sections 47 and 63, all open house-sites purchased for consideration belonging to or held by the out-going proprietor or any other person shall continue to belong to or be held by such proprietor or other person, as the case may be; and the land thereof with the areas appurtenant thereto shall be settled with him by the State Government on such terms and conditions as it may determine. Sections 47 and 63 are not relevant for the purposes of the present discussion and therefore it is not necessary to set out what they provide.

37. Section 50 has an important bearing on this case, and we would set out its terms 'in extenso'. They are as follows:

> "50(1) Notwithstanding anything contained in the Central Provinces Land Revenue Act, 1917, on and from the date of vesting, every proprietor acting as 'sadar lambardar' or 'lambardar' before such date in a mahal or 'patti' vesting in the State under section 3 shall cease to act as such and the Deputy Commissioner shall, in accordance with rules made in that behalf, appoint a person as patel for each village on such terms and conditions as may be prescribed. (2) Every such patel shall -
> (a) collect and pay into Government Treasury land revenue and rents payable by 'malik makbuzas', tenants and other persons in the village;
> (b) in accordance with such rules as may be made, exercise on behalf of the State Government all powers exercisable by a landlord under the Central Provinces Tenancy Act, 1920;
> (c) perform such duties and exercise such powers as may be prescribed."

It would thus seem that this section overrides the provisions of the Land Revenue Act in so far as they are inconsistent with the provisions of the Madhya Pradesh Abolition of Proprietary Rights Act in regard to the right and powers of a 'sadar lambardar' or a 'lambardar'.

38. Section 89 is another provision which gives effect to the provisions of this Act and the rules made thereunder even though they are inconsistent with the provisions of any other enactment or any instrument having effect by virtue of any enactment other than this Act.

39. Section 8 imposes a duty on the State Government to pay compensation to the out-going proprietor in respect of his interest which is acquired by the State.

40. I would now advert to Section 203, Land Revenue Act, which deals with house-sites. Sub-section (1) of section 203 lays down that every person holding land in a mahal or patti for agricultural purposes otherwise than as a sub-tenant or ordinarily working, therein as an agricultural artisan or labourer, or holding the post of village-watchman is entitled to a house-site of reasonable dimensions in the 'abadi' of such mahal or patti free of rent. Sub-section

> (2) of that section says that such person on ceasing; to hold such land, or to work as an agricultural artisan or labourer, or to be the village-watchman, shall forfeit his right under sub-S.(1). Sub-section (3) provides that a person holding a site under sub-S.(1) shall be

incompetent to transfer it except to his next heir or to a person entitled to and not already in possession of such site.

41. It is not necessary to refer to the other provisions of this section as they are not applicable to the two appeals which I am now dealing with. From the foregoing discussion, it would follow that where a person holding a site under sub-S.(1) transfers it to a person not entitled thereto and not already in possession of such site, the proprietor will have a right to eject the transferee. It is because of this that the landlords in the two appeals brought the suits for ejectment of the transferees and their suits were decreed by the lower appellate Court. The right of a landlord to bring such a suit is conferred on him by cls.(b) and (d) of sub-S.(2) of Section 188, C.P. Land Revenue Act, which run thus: "(2) The lambardar shall in the mahal or patti
for which he is appointed –

* *

(b) exercise the powers of the proprietors in matters relating to the village abadi and the enjoyment of their rights and privileges by tenants and other over the waste land of the village including the grazing of cattle thereon;
(d) if necessary, institute suits and take other proceedings relating to the exercise of the aforesaid powers and against trespassers on the common property."

42. It would seem that by the operation of Sections 50 and 89, M.P. Abolition of Proprietary Rights Act, the landlord's power to institute suits for evicting an unauthorized occupant of an 'abadi' site has come to an end, and the only person who could now bring such a suit would be the patel provided he is especially empowered in this behalf by the rules made under the Act. The rules which have been framed under the Act do not, however, confer any such power on the patel.

43. Here, as already pointed out, the suits were in fact brought by the lambardars before the Act came into force and they have succeeded. What is, however, argued is that the appeals are a continuation of the suits and that, therefore, the suits must be deemed to be still pending. If the suits are deemed to be still pending then it is said that they cannot continue hereafter because the landlords are now completely out of the picture and can thus have no right to continue the suits. On behalf of the landlords it is argued that such a construction would give a retrospective operation to the M.P. Abolition of Proprietary Rights Act, and that as held by the Supreme Court in - '*Firm Chhotabhai Jethabai Patel and Co. v. The State of Madhya Pradesh*[43]', retrospective operation is not to be given to the Act.

44. In the aforesaid case the question which their Lordships had to determine was whether certain contracts entered into by the landlords of malguzari villages prior to the date of vesting, conferring rights on some persons to pluck, collect and carry away tendu leaves and other similar rights could be enforced by those persons against the State after the proprietary rights in these villages vested in the State. Their Lordships observed that under section 4 only rights existing on the date of vesting vested in the State and that section 4 is not retrospective. They also made it clear that a right which a proprietor had as against a transferee, lessee or a licensee on the date of vesting would vest in the State and could, therefore, be enforced by the State. It is precisely from

this point of view that the present cases have to be looked at and decided. In each of these cases the landlord claims to have a right as against another; the right he asserts is a proprietary right; such right has not been expressly saved to him. It must, therefore, be held to have passed to the State.

45. No doubt in the cases before us, save one, the landlord had obtained a decree against the defendant but has yet to obtain possession thereunder. To give him possession now would be to augment his 'home-farm' or 'homestead' which the Abolition of Proprietary Rights Act does not contemplate. Since the landlord had not perfected his rights under the decree by obtaining possession before the date of vesting, he cannot, in my judgment be allowed to do so now.

46. The enactment of the Abolition of Proprietary Rights Act during the pendency of the litigation has created a new situation and we must take notice of the Act and adjudicate on the rights of the parties in the light of that Act. That such a course is permissible would appear from the decision of the Federal Court in - *'Lachmeshwar Prasad Shukul v. Keshwar Lal'*[44], which is based on - *'Quilter v. Mapleson*[45]*', - 'Attorney General v. Birmingham etc*[46]*.',* and - *'Kristaunama Chariar v. Mangammal*[47]*',* In that case their T.ordships held that an appeal to the Court of Appeal is by way of a re-hearing. It would follow from this that the suits brought by lambardars must be deemed to be still pending wherever appeals are pending in this Court or the lower appellate Court. The right given to the lambardar to bring a suit no

[43] AIR 1953 SC 108 [45](1882) 9 QBD 672 [47]28 Mad 91 at pp. 95-9S (FB)
[44] AIR 1941 PC 5 at pp.10, 12-14 [46](1912) AC 788

doubt accrued long before the Act came into force, but it is equally necessary that he should have that right till the ultimate decision of the suit, that is to say, till the decision of the second appeal. The decision of their Lordships of the Privy Council in - 'AIR 1914 PC 111 ', also supports this view. No doubt that decision turns on the interpretation put by their Lordships on Section 65, Bengal Tenancy Act of 1885, but the language here used being similar the decision of their Lordships covers these cases.

47. It would be relevant to refer again to - 'Lachmeshwar Prasad Shukul's case ', where Varadachariar, J., with whom Gwyer, C.J., agreed, observed;

> "It is also on the theory of an appeal being in the nature of a re-hearing that the Courts in this country have in numerous cases recognized that in moulding the relief to be granted in a case on appeal, the Court of appeal is entitled to take into account even facts and events which have come into existence after the decree appealed against."

His Lordship then pointed out that the practice of the Judicial Committee in this respect does not appear to have been uniform, and then pointed out that whereas in - *'Ponnamma v. Arumogam*[48]*',* the Judicial Committee thought that the only question before it was whether the order of the Court from which the appeal was brought was right on the materials which that Court had before it. In - 'AIR 1938 PC 49 ', it dismissed the appeal before it on the strength of a provision contained in an enactment which was passed only during the pendency of the appeal before His Majesty in Council. His Lordship, therefore, expressed the opinion that it is the latter case which should be followed.

47A. In a previous case in - *'Shyamakant v. Rambhajan*[49]*',* their Lordships again following the

decision in - 'Mukherjee's case ', applied to a case which was pending before the Court a law which was enacted after the lis' commenced. In this Court also there is an authority for the proposition that a Court can take notice of subsequent, events. Thus, in - *'Mandliprasad v. Ramcharanlal*[50]*',*), J. Sen, J., who delivered the judgment in the case observed as follows at pp.10-11:

> "Two principles are well recognized in the matter of grant of relief to suitors and have been stated with precision by Mookerjee, J., in - 'AIR 1915 Calcutta 103', in these terms. A suit must be tried in all its stages on the cause of action as it existed at the date of its commencement. The Court, however, may in suitable eases take notice of events which have happened since the institution of the suit and afford relief to the parties on the basis of the altered conditions.

This doctrine is of an exceptional character and is applied in cases where it is shown that the original relief claimed has, by reason of subsequent change of circumstances, become inappropriate, or, that it is necessary to base the decision of the Court on the altered circumstances in order to shorten litigation or to do complete justice between the parties."

[48](1905) AC 383 [50] AIR 1948 Nag 1

[49] AIR 1939 FC 74 at p. 85

48. In - *'Bhaskar v. Mohammad Alimullakhan*[51]*',* a Division Bench of this Court consisting of my Lord the Chief Justice and myself applied the attended provisions of the Berar Land Revenue Code to appeals pending in this Court and adjudicated upon the dispute between the parties in the light of the law as amended. In - '*Manghanmal v. Messrs. Amrit Pharmacy*[52]*',* the same Bench observed:

> "As in the case of amendments, there is one important distinction which must be kept in mind, and that is the difference between rights dependent upon statute and those which are not. Generally, an action dependent upon a statute falls with its repeal, even after the action thereon has been instituted, in the absence of a saving clause. In other words, rights dependent upon a statute and still inchoate, that is, not perfected by a final judgment, are lost by a repeal of the statute."

This view was reiterated by the Bench in - *'Hukumchand v. Motilal*[53]*',*

49. The fact that consequent on the passing of the M.P. Abolition of Proprietary Rights Act, a village proprietor, the lambardar and the sadar lambardar have all ceased to exist cannot be lost sight of. It would follow from this fact that the rights which were exercisable by persons by reason of their holding these capacities can no longer be exercised by them. It may be that the cause of action for enforcing their respective rights arose long before the Abolition of Proprietary Rights Act came into force, but as those rights had not matured into vested rights - because final decrees concerning those rights had yet to be passed - it is difficult to see how they can be enforced. The appeals must, therefore, be allowed and the suits of the landlords dismissed.

50. There is another way of looking at the matter. Under the Abolition of Proprietary Rights Act the State has acquired the entire proprietary interest of the landlord except in regard to certain

specified rights. These rights do not include rights to 'abadi' sites, or to lands surrendered to co-sharers, or to grass lands or to lands which have been purchased by one tenant from another without the permission of the landlord. As already pointed out, in so far as 'abadi' sites are concerned, the transferees of these sites for consideration who were in possession of the sites at the date of the commencement of the Act were to continue in possession subject to such agreement as may be arrived at between them and the Government. There is no such express provision regarding the lands which have been surrendered by a tenant to a co-sharer, or grass lands or lands which have been purchased by one tenant from another and is the subject of a suit for pre-emption. At the same time it must be remembered that unless any land falls within the definition of 'home-farm' or 'homestead' as contained in Sections 2(g) and 2(h) respectively of the Act, or unless the land has been brought under cultivation by the landlord after the agricultural year 1948-49 but before the date of vesting, he can no longer claim any title thereto. In so far as his remaining proprietary interest is concerned he has to content himself with the compensation that has been awarded to him. Having ceased to be a proprietor, he can no longer claim in

[51] AIR 1953 Nag 40

[52] S.A. No.312 of 1948 D/-14-2-1952 (Nag)

[53] M.P. No.131 of 1952 D/-24-9-52 (Nag)

a Court of law to exercise any right of a proprietor as from the date of the commencement of the Act.

51. In this view, civil suit no. 88-A of 1947 pending before the First Civil Judge, 2nd Class, Wardha, cannot proceed at the instance of an ex-lambardar. For the same reason Civil Revision No.577 of 1949 must succeed though on a ground different from the one on which it was admitted.

52. I would similarly hold that Second Appeals Nos.126 of 1947 and 648 of 1951 must be allowed because the decrees obtained by the respective respondents in those appeals have become unenforceable by reason of the enactment of the Abolition of Proprietary Rights Act.

53. I would also hold that the decrees for preemption which are the subject-matter of Miscellaneous (Second) Appeals Nos.62 of 1952 and 63 of 1952 are no longer executable because the person who is seeking to execute them has lost his proprietary interest. The decision in - *'Forbas v. Maharaj Bahadur Singh '(cit. sup.)*', supports this view. These appeals must, therefore, be allowed.

54. Second Appeal No.197 of 1947 which has been brought by the former lambardar for possession of certain 'ex-tenancy lands' must be dismissed on the simple ground that he has ceased to be a proprietor and the land in question is not saved to him by Section 4(2) of the Abolition of Proprietary Rights Act.

55. I would direct that the costs throughout shall be borne as incurred.

Sinha, C.J.

56. This Special Bench was constituted to consider the effect of the Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (No.1 of 1951), (which will be referred to in the course of the judgment as the Act) on pending litigation in respect of houses and houses-sites '(abadi)', grass lands, and the right of pre-emption etc. The number of such litigation pending in

the original Court or in the Court of appeal, as also in this Court, must necessarily be very large. Hence, the decision of this case one way or the other is bound to affect many more cases.

57. I have had the advantage of considering the opinions recorded by my learned Brethren Hidayatullah and Mudholkar, JJ., and as they have differed in their conclusions I have to determine which of the two conflicting views takes the correct view of the situation created by the Act, which has rightly been characterized as revolutionary in the sense that it has revolutionized the system of land holding as it has prevailed in these parts for about a century.

58. The most important consideration, therefore, is, what is the exact scope and effect of the Act? According to the preamble of the Act, it makes provision for the acquisition of proprietary rights in certain tenures which have prevailed in different parts of Madhya Pradesh and which are not of a similar nature and are the results of historical events which led to the piecing together of different parcels of Central India into what was called the Central Provinces and Berar, and now renamed Madhya Pradesh. The ruling idea is to abolish proprietary or intermediate interests in land between the State at the top and the actual tiller of the soil at the bottom. Under section 3 of the Act, on the date specified by a notification by the State Government, which may be stated generally to have been 31-3-1951, all proprietary rights described in the section 'shall pass from such proprietor or such other person to and vest in the State for the purposes of the State 'free of all encumbrances'.' (I have underlined these words (here in ' ')). Under the provisions of sub-S.(2) of that section, after the notification aforesaid no right can be acquired over such proprietary interest as described in sub-S.(1) of that section, except by succession or under a grant or a contract by the State. The consequences of the operation of section 3 of the Act have been set out in Section 4, viz., (in so far as it is relevant to our present purpose) all rights, title and interest vesting in the proprietor, including grass land, village sites, etc., 'shall cease and be vested in the State for purposes of the State free of all encumbrances', with the result that all dealings in respect of such proprietary rights get detached from them and attached to compensation in respect of those rights, as contemplated in Section 8, which makes provision for compensation and interest etc.
Another consequence of the vesting of proprietary interest in the State is that all grants and confirmation of title in respect of land comprised in such proprietary interest shall come to an end, and such proprietary interest shall not be liable to any processes of any Court, civil or revenue, and all pending processes shall cease to be in force. What have been saved to the proprietor from the all-embracing provisions of section 4 are (1) lands in his possession as homestead, home-farm land etc., and (2) any claim of money by an outgoing proprietor which became due to him before the date of vesting of the proprietary right in the State. Section 5 also specifically saves to the outgoing proprietor certain rights, including all open house-sites purchased for consideration, all buildings etc. standing on lands included in such enclosures or house-sites or land appertaining to such buildings or places of worship within the limits of a village site. Of course, he can hold those on such terms and conditions as may be determined by the State. Thus, what has been saved to the outgoing proprietor under the provisions of Sections 4 and 5 of the Act, relatively to the matters in controversy before us, is land and houses and house-sites in his direct possession and not in possession of 'any other person' (as used in Section 5). Under section 7 the Deputy Commissioner has to take charge of all lands and interests vesting in the State under Section 3, subject of course to those provisions of Sections 4 and 5 which have saved to the outgoing proprietor and other persons interests in land and houses and house-sites etc.

59. At this stage it is convenient to consider the question of the position of the State Government 'vis-a-vis' the outgoing proprietors. Does the Act constitute the State Government the assignee or legal representative of the outgoing proprietors within the meaning of Rule 10 of Order 22, Civil Procedure Code? It was argued on behalf of the landlords that the State steps into the shoes of the proprietors, and that unless the State chooses to be substituted on the record in their place they are entitled to continue the litigation, even though their interest has been determined as a result of the new law. On the other hand, it was argued by the learned Advocate General, who appeared on notice, and the counsel appearing on behalf of the parties opposing the landlords, that Rule 10 of Order 22 does not apply to the situation created by the Act, because the State takes all the proprietary interests free from all liabilities or encumbrances created by the outgoing proprietors. The Advocate General further contended that under the provisions of the Act the State Government has to settle its own terms with persons whom they find actually in occupation of houses or house-sites in the 'abadi' area of a village, and that in accordance with the policy of the Government, as it appears from the Act itself, the Government is interested, not in ejecting any occupants of lands or house-sites, but only in realizing revenue from those occupants. He also argued that the Government was not prepared to intervene in the litigation and thus become liable for costs if the result of the litigation goes against it.

60. Sections 3 and 4 of the Act make it clear that the property vests in the Government free from all encumbrances. In this connexion the counsel for the landlords drew our attention to the recent decision of their Lordships of the Supreme Court in - ' AIR 1953 Supreme Court 108 ', in which their Lordships have held that grants by outgoing proprietors before the date of vesting in respect of the right to collect tendu leaves etc., could not be interfered with by the State Government, because those contracts were binding on the State Government also. That decision of the Supreme Court does does not touch the controversy in the instant cases, because those grants related not to interest in land but only to licenses. What the Act in effect does is to wipe out the interest of the intermediaries between the State and the actual tillers of the soil. As a result of the wiping out of those interests the State comes into direct relationship with persons who are in direct occupation of agricultural lands or house-sites and buildings on such house-sites being parts of village sites; that is to say, the proprietor, by whatever name described, as the receiver or Collector of rent and as lambardar, has been abolished: vide Section 50. The State Government, therefore, is not in the position of the assignee of the interest of the proprietor, nor is it his successor in title. The State does not claim proprietary interest, either through or under the outgoing proprietor. The State, as the ultimate owner of all property situate within its boundaries, naturally becomes the owner of all property in villages, except those interests which have been recognized by the State as still vesting in or held by individuals in their rights as cultivators ('malik-makbuza' or otherwise) or as house-holders by virtue of being inhabitants of the village, or as having acquired by purchase or otherwise house-sites or buildings on house-sites. In view of these considerations, in my opinion, the provisions of Rule 10 of Order 22, Civil Procedure Code, are out of the way.

61. The suits giving rise to these appeals or applications as the case may be, except possibly the suits for pre-emption, have been instituted by the plaintiffs in their character as 'lambardar' or 'sadar lambardar'. A 'lambardar' appears to have had a dual character. Firstly, as agent of the Government his duties were to collect and pay into the Government Treasury the Government share in the collections from tenants, and he had other duties like assisting Government agents in

the mofussil in the discharge of their duties. Secondly, he was the statutory agent of the proprietors. Under the provisions of section 188(2)(b), Central Provinces Land Revenue Act, he was to be deemed to be the landlord and had to exercise the powers of the proprietors in matters relating to the village 'abadi' and the enjoyment of the rights and privileges by tenants and otherwise over land comprised in the village. He was also empowered to collect village profits and was under an obligation to render an account of the same to the proprietors, and if necessary he was also to institute suits and take other proceedings in relation to the common property of the proprietors, whose statutory agent he had been created. Hence, the suits for ejectment in respect of 'abadi' sites or grass lauds or lands surrendered by tenants or lands purchased by co-sharer-landlords are by him as the statutory representative of the body of proprietors, including himself. Hence, the institution of suits by the 'lambardars', being one of his powers under Section 188, Central Provinces Land Revenue Act, becomes his duty in relation to his principals, the entire body of proprietors. It would thus appear that it is not correct to say that these suits instituted by the 'lambardar' had not been instituted by him in this representative capacity.

62. It is manifest that the lambardar's representative capacity would last only so long as the interest of his principals, the proprietors, continued, and naturally, therefore, Section 50 of the Act, as already indicated, specifically provides that from the date of vesting, the proprietor acting as 'sadar lambardar' or 'lambardar' shall cease to act as such. Therefore, on the date of the vesting of the estates in question as aforesaid, the office of the 'lambardar' or the 'sadar lambardar' ceased to exist.

63. The section further envisages the appointment of patels to carry out the functions of the 'lambardar' and such other functions as may be prescribed by rules under the Act. It is pertinent to observe in this connexion that the patel so appointed is in no sense the successor in office of title of the 'lambardar'. Similarly, the Government, or its District Officer, the Deputy Commissioner, cannot be said to be the legal representstive of the outgoing lambardar. The provisions of section 183, Land Revenue Act, in so far as they relate to the lambardar and his duties and functions, have thus been rendered obsolete by the provisions of section 50 of the Act.

64. It is thus clear that the suits by the 'lambardar' had been instituted in his character as such, and it must follow as a natural corollary that if his interest as such has ceased, his right to the remedy afforded by the provisions of the Land Revenue Act must cease likewise. I consider the decision of their Lordships of the Judicial Committee of the Privy Council in - 'AIR 1914 PC 111 ', as an authority for the proposition that the right to pursue a special remedy given to the landlord in his character as such continues only so long as he continues to hold that character. As soon as that character ceases the remedy also ceases. In the reported case the question was whether the landlord could enforce his 'first charge' created by Section 65, Bengal Tenancy Act, after he had ceased to be the landlord. The decision of the Calcutta High Court under appeal had relied upon an earlier Full Bench decision in - *'Khetra Pal Singh v. Kritarthamoyi Dossi[54]',*

In that connexion the learned Judges of the Calcutta High Court had made the following remarks :

> "Now, no doubt, the decision of this Full Bench does not deal with a case such as the present in which the landlord had parted with his interest before he instituted his suit for

rent, but it would seem to follow that if he can execute a

[54]33 Cal 566

decree of arrears of rent as a rent decree after he has parted with his interest as landlord, he tan also do so when he obtained his decree for rent, even after he had parted with his interest in the property. The character of the decree a suitor obtains depends on the nature of the claim and of his right to the relief sought for, and is not altered by any change in his position which may have taken place subsequent to the accrual of his right to sue."

65. Reversing that decision, after an elaborate discussion of the scheme of the Tenancy Law, their Lordships made the following observations at page 114:

> "To acquire the right which the section gives, not only the person obtaining the decree must be the landlord at the time, but the person seeking to execute it by sale of the tenure must have the landlord's interest "vested" in him. In other words, the right to bring the tenure or holding, as the case may be, to sale exists so long as the relationship of landlord and tenant exists."

Their Lordships further made the following observations at page 102, which have a direct bearing on the point in controversy before us:

> "The learned Judges of the High Court seem to think that either from the nature of the debt being arrears of rent, or the decree being for arrears of rent, the tenure becomes ipso facto hypothecated so to speak for the debt; and that consequently the person to whom the debt is due, although he has ceased to be the landlord, and is to all intents and purposes, so far as other rights and obligations under the law are concerned, a total stranger to the property with which those rights and obligations are inseparably connected, has the special remedy given to the landlord to recover arrears attached to the tenure. This conception of the legal position seems to their Lordships untenable, for the charge created by section 65 is clearly in favor of the landlord."

66. I have made these copious quotations from the judgment of the Calcutta High Court and from the observations of their Lordships of the Judicial Committee in order to bring out pointedly the bearing of that case on the present controversy. The learned Judges of the Calcutta High Court had taken the view that substantive rights cannot be changed by a change of circumstances subsequent to the accrual of the right to sue; but their Lordships of the Privy Council have clearly laid down the dictum that if a special remedy is provided by a statute to persons occupying the position of landlords, those special remedies are available to them only so long as they continue to hold that character. As soon as that character ceases the special remedy also comes to an end.

67. Their Lordships of the Judicial Committee have made reference to the Full Bench decision in - '33 Cal 566 ', but they did not overrule that decision in express terms. They would appear to have only distinguished that case. But their 'ratio decidendi' completely covered the facts of the case in the Full Bench decision also. Hence, after the decision of their Lordships of the Privy Council there was a large body of case law on the question whether the earlier decision of the

Full Bench in - '33 Cal 566 ', was still good law. There was a sharp difference of opinion on that question, and in - 'AIR 1932 Calcutta 321 ', a Special Bench of 7 Judges presided over by Sir George Rankin had to be constituted to resolve that difference. The learned Judges unanimously came to the conclusion that the earlier Full Bench decision in - '33 Cal 566 ', was no more good law in view of the pronouncement of the Judicial Committee referred to above, and they, therefore, overruled that Full Bench decision. In this case the learned Judges went to the whole length by laying down that only the landlord could enforce the charge against the holding and if he ceased to be the landlord at any stage of the litigation he ceased to have any right to enforce that charge. Sir George Rankin, who delivered the opinion of the Special Bench approved the following dictum of Chatterjea and Richardson, JJ., in - *'Prafulla Krishna Deb v. Nosibannessa Bibi*[55]*',*

> "It will be seen, therefore, that the principle upon which the judgment of their Lordships proceeds, viz., that in order to acquire the right which the section gives, not only the person obtaining the decree must be the landlord at the time, but the person seeking to execute it by sale of the tenure or holding must have the landlord's interest vested in him, that the right to bring the tenure or holding to sale exists, so long as the relationship of landlord and tenant exists, and that it is the existing landlord alone who can execute the decree, applies equally to a case where the landlord ceases to be landlord after he obtains a decree for arrears of rent and before he seeks to enforce it against the tenure or holding, as to a case where he ceases to be landlord before he institutes his suit for rent. In either case there is no relationship of landlord and tenant at the time when the remedy provided by law is sought to be enforced."

68. In this connexion reference has been made to the Federal Court decision in AIR 1947 FC 19 , which considered the Privy Council decision in AIR 1914 PC 111 . Before their Lordships of the Federal Court the question directly in issue was about the constitutionality of Section 168A, Bengal Tenancy Act. While dealing with that main question their Lordships also had to consider the alternative argument to the effect that even if that Section was not 'ultra vires' of the State Legislature it did not apply to the facts of the case then before their Lordships. Reliance was placed on the decision of their Lordships of the Judicial Committee in AIR 1914 PC 111 for the very wide proposition that no provision of the Bengal Tenancy Act could apply after the relationship of landlord and tenant had ceased to exist. Their Lordships repelled that contention and held that the Judicial Committee of the Privy Council had not gone to that length. In that connexion their Lordships of the Federal Court considered the very terms of Section 168A, Bengal Tenancy Act, and held that that section applied to the case before their Lordships. I do not find anything said by their Lordships of the Federal Court to detract from the proposition laid down by their Lordships of the Judicial Committee to the effect, as already indicated, that the special remedy provided by the Bengal Tenancy Act was available to the landlord only so long as the interest of the landlord continued vested in him. That general proposition laid down by their Lordships of the Judicial Committee was not in question before their Lordships of the Federal Court. In other words, their Lordships of the Federal Court were immediately concerned only with the limited question (1) of the constitutionality of Section 168A and (2) of the scope of that section. Naturally, therefore, their Lordships ruled that the observations of the Judicial Committee of the

[55] AIR 1917 Cal 308 (SB)
Privy Council in - 'AIR 1914 PC 11 ', did not apply to the case before them.

69. Another question which has been mooted with reference to the points raised on behalf of the appellants in some of the cases to defeat the plaintiffs' claim for ejectment is whether the defendants are pleading 'jus tertii'. I do not understand the argument as taking that form. What has been pleaded on behalf of the appellants in some of the cases is that the Act has revolutionized the land tenure in Madhya Pradesh as it obtained before the coming into effect of the Act and that as a result of that the malguzars and other proprietors have ceased to exist.

As a corollary to that legal position, it is argued, with the extinguishment of the proprietors' interests the rights, including the right to eject persons from 'abadi' sites or other kinds of rights have also ceased. In this connexion it was contended on behalf of the opponents of the landlords that according to Section 5 (a) of the Act all open house-sites purchased for consideration and buildings or land appertaining to such buildings shall continue to belong to or be held by such proprietor or other persons.
Hence, the argument is that the provisions of section 5 (a) touching upon house-sites and buildings etc., as aforesaid have rendered nugatory any claims that the outgoing proprietors may have had before these provisions were enacted. In that context it is further argued that the words 'any other person' include persons in the positions of the appellants, that the Act has created a right in them which they did not possess before, and that those rights were wholly inconsistent with the rights of the proprietors to eject them. The effect of the new enactment, it is claimed on behalf of the appellants, is that the proprietors' rights of ejectment, on whose behalf the lambardars had instituted the suits for ejectment had come to an end, and the occupation for the time being by a cosharer-proprietor or any other person, which may not have been regular before the Act came into existence, has been regularized by the new legislation, the only condition further added to those provisions being that the land on which the building or the house sites stand shall be settled with the occupant on such terms and conditions as the State Government may determine. Hence, what now remains is not the determination of the question whether or not the occupants for the time being shall continue to occupy the house-sites or the buildings, but only the terms on which they will continue to hold those properties under the State Government. In other words, the contention of the defendants-appellants is that as a result of the coming into effect of the Act they have acquired rights which were not possessed by them before, and that those rights are no more in controversy, and that they have only to settle their terms with the State Government. Such a plea, in my opinion, does not amount to pleading 'jus tertii'. I would, therefore not consider the further question whether the defendants could plead 'jus tertii', and if so in what circumstances.

70. From what I have said above it is clear that it is not right to say that the defendants have not acquired a right to remain on the house-sites or occupy the buildings which they have been doing. It is true, as found by the Courts below, that according to the law as it stood at the date of the commencement of the suits these occupants were not continuing in possession of the properties in question as of right. The provisions of section 5 (a) of the Act make it clear that the intention of the legislature was to leave co-sharer-proprietors and other persons in questionable possession of property of the nature of house-sites or buildings in malguzari villages in undisturbed possession, as if they had been occupying the premises lawfully, and to safeguard the interest of the State by making it obligatory on the occupants to hold those properties on such

terms and conditions as the State Government may determine.

71. It has also been argued that merely because the plaintiff has lost his title during the pendency of the litigation he should not be non-suited, because it is open to the successor-in-interest of the plaintiff to be substituted or added as a party and to continue the litigation to safeguard his interest. In this connexion reference has been made to the leading judgment of the Calcutta High Court in - 'AIR 1915 Calcutta 103', A large number of cases have referred to that case with approval or discussed it: for example - 'AIR 1935 Patna 488', - 'AIR 1924 Madras 731', Those cases are authority only for the proposition that the provisions of Rule 10 of Order 22 are enabling and that they do not involve any penalty against the party already on the record or any prejudice to the party which has not taken recourse to those proceedings. With all respect, those authorities are quite in their place, and nothing can be said against the principle fully established by those decisions. But those decisions cannot determine the controversy before us, because, as already indicated, the Act, the operation and effect of which we have to consider in these cases, is of an extraordinary content and effect. It has abolished all intermediate interests in land between the State at the top and the actual occupants at the bottom.

72. After the coming into effect of the Act there is no place for such intermediaries. Let us suppose that the 'lambardars' are allowed the decree prayed for by them and ejectment is ordered. Can the 'lambardars' on their own account or on behalf of the proprietary body have any interest in the lands so dealt with? The provisions of Sections 3 and 4 make it clear that the landlords can have no interest in those lands. It has not been contended before us that the 'lambardars' either in their own rights or as the statutory agents of the proprietary body could acquire any interest in those properties.

73. But it is said that even though the plaintiffs will not have any present interest in those properties the decree in their favour must be maintained; it may be for the benefit of the State Government. But, as already indicated, the legislature did not intend that the State Government should eject those holders of house-sites or buildings. Hence, if such a decree were maintained it would run counter to the provisions of the statute, and the decree to be passed, if the landlords' contentions are accepted," would not only be nugatory but would nullify the provisions of section 5(a) of the Act. These observations apply only to those cases which involve 'abadi' sites and not other kinds of interest in land.

74. A great deal of argument was addressed to us on the question whether the Act had retrospective effect, either expressly or by necessary intendment. This question has been settled in the negative by their Lordships of the Supreme Court in the unreported decision referred to above. Hence, without any further discussion of the question, I would respectfully adopt the ruling of the Supreme Court and proceed on the basis that the Act is not retrospective in its operation. It is, therefore, not necessary to refer to a large volume of case law, pro and con, which was brought to our notice in the course of the argument. But even so, the question yet remains whether the Act has any effect on the pending litigation.

75. In this connexion it has to be borne in mind, as observed by their Lordships of the Federal Court in - 'AIR 1941 PC 5 ', that the appellate Court has power not only to correct an error in the judgment under appeal but to dispose of the case according to the requirements of justice, which means that the Court is bound to give effect to any change in the law which has come into

existence after the judgment under appeal was given. Their Lordships referred to two leading decisions of the Supreme Court of the United States in - '(1934) 209 US 600 ', and - '*Minnesota v. National Tea Co.*[56]', Therefore, this Court is bound to take notice of the changed legal position as a result of the Act and see to what extent the rights in controversy between the parties are affected by that change.

76. It is true that the mere fact that the litigations have remained pending for a considerable period should not prejudice either party, but if it so happens that during the pendency of the litigation changes of a far-reaching character are effected in the legal position of the parties, the Court is bound to take notice of those changes and to adjust the rights and liabilities of the parties before it in accordance with the changed position.

77. In this connexion reference may be made to the decision of their Lordships of the Privy Council in - 'AIR 1936 PC 49 ', for the limited purpose of showing that the Court has to take notice of a change in the law, if the litigation had been pending long enough. In the reported case the action was commenced in 1927, and when the suit was pending in appeal before their Lordships of the Judicial Committee the Act of 1934 was passed amending the Bihar Tenancy Act. In November 1935, when the controversy was determined by their Lordships of the Privy Council, the amending Act had come into operation, and their Lordships disposed of the case applying the amended law. It is true that in that case, unlike the present group of cases, the amending Act had laid down a rule of evidence and of decision, which took away a cause of action that was good at the commencement of the litigation. If the litigation had ended before the amending Act of 1934 was passed, the decision may possibly have been different. Hence, in my opinion, the question of delay in disposing of litigation is not a relevant consideration, because for the last several decades delay in disposing of litigation has become a chronic feature of the administration of justice throughout this country. It is true that if these cases had been disposed of before the Act came into effect, the result may have been different. But we have to apply the law as we find it at the date of the decision to be given.

78. This is not a class of cases where particular property has been acquired by the State for a public purpose on making compensation to the party expropriated. Here we have a legislation which has been enacted in pursuance of the declared policy of wiping out the interest of rent-receivers and intermediaries between the State and the actual occupants of the soil. The whole scheme of the Act, therefore, is opposed to the recognition of any rights which are inconsistent with that declared policy. In these suits if decrees were to be granted in favor of the outgoing proprietors or their

[56](1940) 309 US 551

statutory agent, the 'lambardar', in respect of 'abadi' sites or grass lands or tenancy lands acquired by third parties or by co-sharer-proprietors themselves, admittedly they cannot keep those lands as their home-stead or home-farm land or in any other capacity after the Act has taken effect.

79. In this connexion it is pertinent to refer once again to the provisions of section 4, which lays down the consequences of the vesting of the proprietary interests in the State. Does that section save to the outgoing proprietors any decrees which they have obtained after the relevant dates as laid down in Section 3? They have been divested of their rights, except those specified in sub-Ss.(2) and (3) of Section 4 'notwithstanding anything contained in any contract, grant or

document or in any other law for the time being in force'. I apprehend that the term 'document' is comprehensive enough to include a decree; that is to say any interests not recognized as having been saved! by sub-Ss.(2) and (3) of section 4 have ceased from the date of vesting, even though those rights may have been contained in a 'document', excluding the other terms not relevant to our present purpose. The words used in section 4 are all-embracing, and they do not, in my opinion, save any rights obtained even under a decree, unless those rights can come within the saving clauses contained in sub-Ss.(2) and (3) of Section 4.

80. For the aforesaid reasons I agree with the conclusions arrived at by my learned Brother Mudholkar, J. The cases will thus be disposed of in accordance with the directions contained in his judgment.
Order accordingly.