

(1994) 03 SHI CK 0011

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 158 of 1981

Smt. Charno Devi and Others

APPELLANT

Vs

Dali Mal (deceased) through his LRs. Shamsheer Singh and Others

RESPONDENT

Date of Decision : 03-03-1994

Acts Referred:

Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953 — Section 67
Himachal Pradesh Tenancy and Land Reforms Act, 1972 — Section 104, 104(3), 45
Hindu Succession Act, 1956 — Section 4(2)
Pepsu Occupancy Tenants (Vesting of Proprietary Rights) Act, 1954 — Section 67
Punjab Security of Land Tenures Act, 1953 — Section 8
Punjab Tenancy Act, 1887 — Section 17, 18, 59, 59(1), 59(4)

Citation : (1994) 2 ShimLC 279

Hon'ble Judges : Devinder Gupta, J

Bench : Single Bench

Advocate : H.K. Bhardwaj, for the Appellant; S.S. Kanwar, for Respondent Nos. 3 to 6 and 12 to 13, for the Respondent

Final Decision : Allowed

Judgement

Devinder Gupta, J.—The only question arising for determination in this case is that whether in the absence of the persons mentioned in Clauses (a) to (d) in Section 45 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 (Act No. 8 of 1974) (hereinafter referred to as "the Act") the right of a deceased non-occupancy tenant in the land held by him shall stand extinguished or will such a right devolve on the Ors. heirs, in accordance with the general law of succession.

2. In order to answer the question, it is necessary to refer to the facts of the case. The suit property, owned by the Plaintiff-Respondents is an agricultural land measuring 8 Kanals 10 Marlas comprised in Khasra No. 1195/222/223, situate in village Bharolian Khurd, Tehsil and District Una. It was occupied by Shri Bhagwana, the father of the Appellants, as a non- occupancy tenant on payment

of rent under the owners. Bhagwana died on 4th February, 1975. According to the Plaintiff's, on the death of Bhagwana there was no person available on whom the rights of tenancy u/s 45 of the Act could devolve. Defendant-Appellants being the daughters had no right to inherit the rights of tenancy and. as such, the tenancy stood extinguished and the owners became entitled to get back the possession of the land from the Defendants, who had come in its occupation. With this background, suit for possession was filed by the Plaintiffs on 6th July, 1976. The suit was resisted by the Defendants, who claimed that Bhagwana had acquired permanent occupancy rights and on coming into force of the Act had become its owner. All rights, title and interest of the land owners had come to an end on coming into force of the Act. On the death of Bhagwana, which took place after the coming into force of the Act, they as daughters had lawfully succeeded to the property and as such were entitled to continue in occupation of the same. In the alternative, it was also pleaded by them that in case Bhagwana is not held to have become owner during his life time, on his death, the owners had accepted them as tenants and were thus precluded from claiming possession.

3. The trial Court decreed the suit of the Plaintiffs holding that Bhagwana had not acquired the occupancy rights, but he was only a non- occupancy tenant. Succession to the rights of tenancy would be governed by Section 45 of the Act. Defendants being daughters do not fall in any of the categories of heirs specified in Section 45 of the Act, therefore, in the absence of any heir, the tenancy rights would revert back to the owners. It was also held that Bhagwana died after coming into force of the Act but he had not become the owner of the property since rights, title and interest of a land owner in the land held by a non-occupancy tenant, by virtue of Section 104(3) of the Act would come to an end and vest in the tenant, on or from the date to be notified by the State Government in the official Gazette, which in this case was 3rd October, 1975, when the Himachal Pradesh Tenancy and Land Reforms Rules, 1975 came into force. Bhagwana had died earlier and in the absence of any person, as specified in Clauses (a) to (d) in Section 45 of the Act on whom the tenancy rights could devolve, the same stood extinguished and the Defendants had no right, title or interest to hold back possession. The suit was decreed by the trial Court.

4. Appeal of the Defendants was also dismissed. The Appeal Court also concurred with the findings of fact. It is this judgment and decree, which is under challenge in this appeal.

5. I have heard the learned Counsel for the parties and have gone through the record. Learned Counsel for the Defendant-Appellants has vehemently urged that there is nothing in Section 45 of the Act, which has the effect of extinction of the tenancy rights of a non-occupancy tenant in the event of non-availability of any person specified in Clauses (a) to (d) of Section 45, which only gives preference to the persons specified in the said provision. In the absence of persons, as are specified in Clauses (a) to (d), the rights of a tenant do not come to an end, but the Ors. natural heirs, in accordance with the general law of succession, would be

entitled to succeed to such rights. It being a beneficial legislation, meant for the benefit of those persons who till the land, has to be interpreted in such a manner, so as to advance the purpose for which the Act is meant. The legislature had deliberately avoided to include a provision similar to the one as is contained in Sub-section (4) of Section 59 of Punjab Tenancy Act, 1887. The tenancy rights on the death of Bhagwana rightly devolved upon the Defendants as daughters under the general law of succession, since there was none-else, on whom such a right could devolve, by virtue of Section 45 of the Act. On coming into force of the Himachal Pradesh Tenancy and Land Reforms Rules, the Defendants became owners of the suit property and thus Plaintiffs were not entitled to claim possession from them.

6. Learned Counsel for the Plaintiff-Respondents has opposed the Submissions made on behalf of the Appellants by urging that the applicability of the general law of succession, namely, Hindu Succession Act, 1956 has specifically been excluded by virtue of Sub-section (2) of Section 4 of the said Act. The matter pertaining to the devolution to agricultural tenancies has been left to the State Legislature and in the case of Himachal Pradesh, it is provided in Section 45 of the Act. In the absence of any of the persons enumerated in Clauses (a) to (d) of Section 45, the rights of a tenant comes to an end and vest in the owner. A non-occupancy tenant had no interest in the property except to continue occupying the same till he continues paying the rent. By creating tenancy, only one of the incidents of ownership, namely, right to possess is given to a tenant, which right would come to an end on the extinction of the line of succession provided for in Section 45 of the Act. Daughters of a non-occupancy tenant are not included in Section 45 and rightly so. On the death of Bhagwana, there being no person on whom tenancy right could devolve within the ambit of Section 45 of the Act, the tenancy right of Bhagwana stood extinguished. The Defendants had no right to continue occupying the property. The Courts below by taking correct view of the law were right in having decreed the suit.

7. After having given my considered thought to the question posed and to the respective submissions made by the learned Counsel for the parties, I am of the view that the judgments and decrees passed by the Courts below are liable to be set aside and the suit deserves dismissal.

8. The Act was passed by the State Legislature on 22nd December, 1972, after it attained the Statehood. State of Himachal Pradesh comprises of two type of areas, namely, old area and merged area. Old area is that part of Himachal Pradesh, which prior to 1st November, 1966 was known as Union Territory of Himachal Pradesh and the merged areas are those areas, which were transferred and merged with the old area on coming into force of the Punjab Re-organisation Act, 1966 on or from 1st November, 1966, which earlier formed part of the State of Punjab. These two areas are being referred to as the "old area" and "transferred territory".

9. In the old areas, it was the Himachal Pradesh Abolition of Big Landed Estate

and Land Reforms Act, 1953 (Act No. 15 of 1954), which was the law applicable to the agricultural tenancies. This Act No. 15 of 1954 was passed by the Himachal Pradesh Vidhan Sabha on 17th June, 1953 and had received the assent of the President of India on 23rd November, 1954. It came into force w.e.f. 26th January, 1955. The said Act repealed the earlier law relating to agricultural tenancies, namely, the Punjab Tenancy Act, 1887 (Punjab Act No. 16 of 1887).

10. In the transferred territory, the principal Act relating to the tenancy laws was the Punjab Tenancy Act, 1887. In addition, there were Ors. numerous legislations, such as, Pepsu Tenancy and Agricultural Lands Act, 1955, Pepsu Occupancy Tenants (Vesting of Proprietary Rights) Act, 1954, Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953 and the Punjab Security of Land Tenures Act, 1953. The suit property is situate within Tehsil and District Una, which earlier formed part of the State of Punjab and is a part of the transferred territory.

11. From the aforementioned, one position which emerges is that prior to coming into force of the Himachal Pradesh Act No. 15 of 1954 in the old area and the Punjab Security of Land Tenures Act, 1953 in the transferred territory, the law relating to tenancies, applicable in both the areas was the Punjab Tenancy Act, 1887. A distinction was made in the said enactment amongst the two categories of tenants, namely, occupancy and non-occupancy. Devolution to right of occupancy was governed by Section 59 of the said Act. Sub-section (1) of Section 59 enumerates the categories of persons in whom the rights of occupancy tenant would devolve, in that order, in the event of his death. Such of the persons have been put in four different categories, which may be mentioned hereunder:

- (a) on his male lineal descendants, if any, in the male line of descent;
- (b) failing such descendants, on his widow, if any, until she dies or remarries or abandons the land or is under the provisions of this Act ejected therefrom;
- (c) failing such descendants and widow on his widowed mOrs. , if any, until she dies or remarries or abandons the land or is under the provisions of this Act ejected therefrom;
- (d) failing such descendants and widow, or widowed mOrs. , or if the deceased tenant left a widow, or widowed mOrs. then when her interest terminates under Clause (b) or (c) above, on his male collateral relatives in the male line of descent from the common ancestor of the deceased tenant and those relatives. In this case it is also necessary to prove that the common ancestor occupied the land.

Sub-section (4) of Section 59 of Punjab Tenancy Act, 1887 provides that in the event of occupancy tenant leaving no heir as enumerated in Clauses (a) to (d) of Sub-section (1), rights of occupancy shall stand extinguished. Sub-section (4) of Section 59 is quoted as under:

If the deceased tenant has left no such persons as are mentioned in Sub-section (1) on whom his right of occupancy may devolve under that Sub-section, the right shall be extinguished.

12. In the old areas, after repeal of the Punjab Tenancy Act, 1887, as was applicable to the said area, it was the Himachal Pradesh Abolition of Big Landed Estate and Land Reforms Act, 1953 (Act No. 15 of 1954), which was enacted as a law relating to agricultural tenancies. It made important and vital changes in the then existing law and was a step forward in agrarian reforms. Though in some of the fields, a distinction between occupancy and non-occupancy tenants was maintained, but no distinction was made in so far as devolution to the tenancy rights in the event of death of a tenant. The Punjab Tenancy Act did not have a provision for devolution of the rights of a non-occupancy tenant in the event of his death. It is conceded at the Bar that on the death of a non-occupancy tenant, such a right would stand extinguished and property reverting to the land owner. But while enacting the Himachal Pradesh Act No. 15 of 1954, the distinction was done away and in Chapter VI of the said Act, Section 67 provided for devolution to right of tenancy whether it was occupancy or non-occupancy. Clauses (a) to (d) of Section 67 categorized persons in that order, on whom the right of tenancy would devolve in the event of a death of a tenant. It is worthwhile to mention here that a provision similar to the provision, as contained in Sub-section (4) of Section 59 of the Punjab Tenancy Act, 1887, which provided for the extinguishment of the occupancy rights in the event of there being no person specified in Clauses (a) to (d) was not incorporated in Himachal Pradesh Act No. 15 of 1954.

13. In the State of Punjab, an Ors. law, which was enacted, with a view to provide for the security of land tenure and Ors. incidental matters, was the Punjab Tenants (Security of Tenure) Act, 1950 (Punjab Act No. XXII of 1950). It was amended by the Punjab Tenants (Security of Tenure) Amendment Act, 1951 (Act No. V of 1951). Both of these enactments were repealed and were replaced by the Punjab Security of Land Tenures Act, 1953 (Punjab Act No. X of 1953). Before this Act was brought about, already Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 had been enacted with the object of vesting proprietary rights in the occupancy tenants and to provide for payment of compensation to landlords, whose rights are extinguished. It was in pursuance to a Land Reforms Committee, which had been set up in the State of Punjab in March, 1949 to examine the tenancy legislation in force in the Punjab and to suggest ways and means to ameliorate the economic condition of tenants. One of the recommendations of that Committee was that the occupancy tenants should be given proprietary rights for their tenancies, which was considered to be in line with the modern trends of thought, namely, that tiller should be the owner of the land. To give security to the tenants, the Punjab Security of Land Tenures Act was enacted and it applied to non-occupancy tenancies since such class of occupancy tenants had already come to an end due to conferment of the proprietary rights under the Punjab Occupancy Tenants (Vesting of Proprietary

Rights) Act. There was no provision, as noticed above, earlier for the devolution of the rights of non-occupancy tenants under the Punjab Tenancy Act, 1887, but a sea change was made by amending the Punjab Security of Land Tenures Act in the year 1955 and substituting the original Section 8 as follows providing for continuity of the tenancies:

Continuity of tenancies.- The continuity of a tenancy shall not be affected by-

(a) the death of landlords, or

(b) the death of tenant except when the tenant leaves no male lineal descendants or mOrs. or widow, and

(c) any change therein under the same landowner; and for the purposes of Sections 17 and 18 of this Act, such tenancy shall be the last area so held.

14. As has been noticed above, Himachal Pradesh Act No. 15 of 1954 as also aforementioned Punjab Acts, as were applicable in both the old areas as well as the merged areas were repealed and substituted by the Act, which came into force on 21st February, 197 Section 45 of the Act in Chapter V deals with the succession to right of tenancy, irrespective of whether a tenant is a occupancy or a non-occupancy tenant and says:

Succession to right of tenancy.- When a tenant in any land dies, the right shall devolve-

(a) on his male lineal descendants, if any, in the male line of descent ; and

(b) failing such descendants, on his widow, if any, until she dies or remarries or abandons the land or is under the provisions of this Act ejected therefrom ; and

(c) failing such descendants and widow, on his widowed mOrs. , if any, until she dies or remarries or abandons the land or is under the provisions of this Act ejected therefrom ; and

(d) failing such descendants and widow or widowed mOrs. or, if the deceased tenant left a widow or widowed mOrs. , then when her interest terminates under Clauses (b) or (c) of this Section, on his male collateral relatives in the male line of descent from the common ancestor or the deceased tenant and those relatives."

Comparing Section 45 of the Act with Section 59 of the Punjab Tenancy Act, the major distinction, which can be noticed is the absence of a clause similar to Sub-section (4) of Section 59 of the Punjab Tenancy Act, 1887 providing for extinguishment of the rights of occupancy tenant on his death in the event of non-availability of any of the persons specified in Clauses (a) to (d) on whom such a right could devolve.

15. Learned Counsel for the Appellants has vehemently urged that the absence of a similar clause as contained in Sub-section (4) of Section 59 of the Punjab Tenancy Act will clearly spell out the intention of the legislature that tenancy

shall not stand extinguished merely due to the absence of a person specified in Clauses (a) to (d) in Section 45, but shall devolve on the Ors. heirs, according to the general law of succession. Learned Counsel for the Respondents has vehemently urged that mere absence of a similar provision will not have the effect of devolution of the rights of tenancy on any person Ors. than the persons mentioned in Clauses (a) to (d). In the event of non-availability of the specified class of persons, the light to hold shall cease and the property shall vest in the landowner.

16. Where a tenancy or land tenure legislation makes a special provision for devolution of tenancy rights, the provision contained in the respective tenancy laws will prevail and to that extent the personal law or the general law of succession will be inapplicable. This proposition will be evident in case reference is made to Sub-section (2) of Section 4 of the Hindu Succession Act, 1956, which reads:

4. (1) Save as Ors. wise expressly provided in this Act-

(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any Ors. law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.

(2) For the removal of doubts it is hereby declared that nothing contained in this Act shall be deemed to affect the provisions of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings.

17. A Full Bench of Madhya Pradesh High Court in Nahar Hira Singh and Others Vs. Mst. Dukalhin and Others, while considering the question of law, namely, whether u/s 164 of the Madhya Pradesh Land Revenue Code, 1959, as it stood prior to its amendment in the year 1961, the female mentioned in Sub-section (2) of Section 164 was a female, who had herself inherited the property under Sub-section (1) of that Section, held that where a tenancy or a land tenure legislation makes a special provision for devolution of rights to lands, that provision will prevail and in that event, Section 4(2) of the Hindu Succession Act, 1956 will make the provision of Hindu Succession Act, inapplicable to such devolution provided by the tenancy or the land tenure legislations. But, if the land tenure legislation itself makes the personal laws of the parties applicable in that event certainly the Hindu Succession Act, 1956, or any Ors. personal law will be applicable. The ratio of the decision in Nahar Hirasingsh's case (supra) also came up for consideration before the apex Court in Bajaya Vs. Gopikabai and Another, on the question of the devolution of the tenancy rights on female heirs. Approving the ratio, the Court held that the devolution of the interest of tenure

holder, when it is subject to his personal law applicable on his death, which in the case of a Hindu means Hindu Law as amended by the Hindu Succession Act, it will undoubtedly govern the inheritance to the estate of tenure holder.

18. In the instant case, it is not in dispute that the Act is the local law in force in the State of Himachal Pradesh providing for devolution of the rights of a tenant on his death, irrespective of the fact whether he is an occupancy tenant or a non-occupancy tenant. The order in which the right of tenancy is to devolve has been enumerated in Section 45 of the Act, which neither in express terms, nor impliedly provide for the extinguishment of the rights of a tenant in the event of there being none available on the date of death, out of the persons as specified in Clauses (a) to (d). The legislature was aware, at the time of the enactment of the Act of Sub-section (4) of Section 59 of the Punjab Tenancy Act, 1887 providing for extinguishment of rights of tenancy in the eventuality of there being none on whom under Sub-section (1) of Section 59 such a right may devolve. Section 45 of the Act cannot be construed in such a manner so as to incorporate therein a provision similar to the one as was contained in Sub-section (4) of Section 59 of the Punjab Tenancy Act, so as to read therein a clause providing for the extinguishment of tenancy rights. In case it is done, it will amount to supplying words in a statute, which are not there.

19. In fact, it will not only be adding one or two words, in case contention of the learned Counsel for the Respondents is accepted, but will amount to adding a full provision in an enactment. The legislature will be deemed to have deliberately omitted a clause similar to Sub-section (4) of Section 59 of the Punjab Tenancy Act providing for extinction of the rights of tenancy after the line of succession had exhausted.

20. When there is nothing in Section 45 of the Act or in any Ors. provision of the Act, which might give an indication that on non-availability of a person, out of the persons specified in Clauses (a) to (d) the rights of a tenant shall stand extinguished, will it be permissible to infer that the legislature intended that the rights of a tenant shall not stand extinguished but will devolve on the Ors. natural heirs of that tenant, in accordance with the general law of succession? For this proposition, it will be necessary to find out the intention of the legislature, which necessarily will have to be ascertained by looking at the aims and objects of the Act.

21. As has been noticed earlier, tenants were usually considered to be of two kinds, occupancy tenants and non-occupancy tenants, later which were also known as tenants-at-will. In vernacular, they are generally called Maurusi (occupancy) and Gair Maurusi (non-occupancy) tenants. A occupancy tenant had a right to hold his land so long he paid the rent fixed by the authority and to pass it on to his descendants on the same terms. In Ors. words, his rights were heritable. A tenant-at-will or a non-occupancy tenant on the Ors. hand was a tenant from year to year or a tenant for fixed term and his rent was determined by agreement. Punjab Tenancy Act did not have a provision for inheritance of the

rights of a non- occupancy tenant. Both the classes of tenants were being treated differently and had different rights over the land under the Punjab Tenancy Act. In the case of occupancy tenant, ejectment was made stringent but it was not difficult to eject a non-occupancy tenant. He could be ejected on the expiry of the period of lease. With the passage of time, there has been an effort to confer more and more rights on the tenants and to narrow the gap amongst the two classes of tenants. While in the merged areas, which formed part of Punjab, legislation was brought about for extinguishment of the rights of the owners and vesting them in the occupancy tenants on payment of compensation AnOrs. Act was enacted for giving more security to the non-occupancy tenants. It was provided that on the death of a non-occupancy tenant, in case he leaves a male lineal descendants or mOrs. or widow the tenancy shall continue and ejectment of a non-occupancy tenant was made for difficult. It was a step forward in curtailing the rights of landowners and giving further security to the class of persons who were actually tilling the land.

22. In the old areas also simultaneously considerable change was brought about when Punjab Tenancy Act, as was applicable, was repealed and substituted by the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953. Right was given to the occupancy as well as to non-occupancy tenants to apply for acquisition of ownership rights on payment of compensation. Both classes of tenants were put at par in the matter of acquisition of proprietary rights. The only difference was in the amount of compensation payable to the landowner for extinguishment of his rights. In the case of non-occupancy tenants, it was more than the one payable by occupancy tenant. Difference in the matter of devolution of the interest, in the event of death was also done away. Grounds of ejectment were also enumerated but ejectment of both classes of tenants were made stringent, as compared to the earlier legislation. In this case also, rights of landowners were considerably curtailed and those of the tenants were not only strengthened but upgraded.

23. The Himachal Pradesh Tenancy and Land Reforms Act (the Act) is anOrs. step forward in achieving the social economic goal of ameliorating the economic conditions of tenants by conferring on them the rights of ownership and extinguishment of the rights of land-owners. It provides for automatic vestment, on coming into force of the Act, of the rights of the owners on an occupancy tenant. In the case of small land owners, a right was conferred for resuming from out of the holding of a non-occupancy tenant land to some extent to bring their holding upto a specified limit. In their cases, after resumption, in the left out land and in case of Ors. land-owners in the entire land held by a non-occupancy tenant, a provision has been made in Section 104 for automatic extinguishment of their rights, title and interest on and from a date to be specified and for vesting the same on the tenant. Thus, the main object of the Act has been to extinguish the rights of all land-owners and to vest them on the actual tiller of the land. The approach, as such, which deserves to be adopted, while interpreting the provisions of the Act, which is a law relating to the

agrarian reforms is the one which was stated by the apex Court in *State of Punjab (Now Haryana) and Others Vs. Amar Singh and Another*, wherein, it was held that:

We have to bear in mind the activist, though inarticulate, major premise of statutory construction that the rule of law must run close to the rule of life and the Court must read into an enactment, language permitting, that meaning which promotes the benignant intent of the legislation in preference to the one which perverts the scheme of the statute on imputed legislative presumptions and assumed social values valid in a prior era. An aware Court, informed of this adaptation in the rules of forensic interpretation, hesitates to nullify the plain object of a land reforms law unless compelled by its language, and the crux of this case is just that accent when double possibilities in the chemistry of construction crop up.

24. In a subsequent decision in *State of Haryana and Others Vs. Sampuran Singh and Others*, approving the ratio in *Amar Singh's* case (*supra*), the Court held that the agrarian policy is equitable ownership and the reform philosophy is redistributive justice, the rural goal being small peasant proprietorship. In case of inconsistency, Courts should favour an interpretation that promotes the general purpose of an Act rather than the one that does not. It was also held that agrarian reform laws with special constitutional status, warrants interpretative skills which should uphold the objects with which enactment has been brought about. If the constitutionally envisioned socio-economic revolution is not to be a paper tiger, agrarian laws have to be meaningfully enacted, interpreted and the court is not the anti-hero in the drama of limping land reform.

25. Learned Counsel for the Respondents wants this Court to read the provision of Section 45 of the Act as if it provides for the extinguishment of the rights of a tenant on his death, in case no person, as is specified in Clauses (a) to (d) is alive. It is not possible to accept such a submission since it will amount to reading a provision, which the legislature will be deemed to have deliberately avoided to incorporate.

26. Section 59 of the Punjab Tenancy Act, 1887, read with Section 8 of the Punjab Security of Land Tenures Act, 1953 and Section 67 of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1954 were the laws for the time being in force, within the old as well as the merged areas as envisaged in Sub-section (2) of Section 4 of the Hindu Succession Act, 1956 providing for the prevention of Fragmentation of Agricultural holding and for devolution of the tenancy rights of such holdings. These provisions were saved on coming into force of the Hindu Succession Act. But the Act, which has repealed and replaced all the aforementioned enactments has been brought into Statute Book after coming into force of the Hindu Succession Act. Having done away with a provision of the extinguishment of the rights of tenancy, after providing the order in which the devolution of the rights is to take place, the legislation will be deemed to have never intended that tenancy would come to an

end in the event of non-availability of the special class of persons enumerated in Clauses (a) to (d) of Section 45 of the Act. It will be deemed to have intended that on the death of a tenant, in the event of non-availability of the persons specified in Clauses (a) to (d), the rights of tenancy shall not stand extinguished, but such rights will devolve upon the Ors. heirs in accordance with the general law of succession applicable to the parties. This interpretation will be in consonance with the objects of the Act, which had the ultimate aim of making the tiller as owner.

27. The earlier state of law noticed above provided for extinguishment of the rights of an occupancy tenant in the event of there being none except a specified class of persons in the male line of descent, on whom tenancy rights could devolve. The subsequent legislation did not deliberately enact such a clause. The earlier enactment did not provide for the devolution of the tenancy rights in the case of non-occupancy tenant. The reason in not providing for the extinguishment of tenancy rights appears to be salutary one that it is the tiller or his family, which must continue to hold the land. Firstly it must go in the male line of descent, in order to prevent the fragmentation of holding. Devolution on the specified females, such as widow or widowed mOrs. also can be said to be with the same object. Due to non-availability of these classes of persons, in case the rights of tenancy are to devolve on the natural heirs according to the law of general succession, it cannot be said that the same is likely to have the effect of fragmentation of holding. The legislature will be presumed to have not undertaken any futile exercise in deliberately omitting to include a Clause similar to one as was contained in Sub-section (4) of Section 59 of the Act. In *Smt. Meera Gupta Vs. State of West Bengal and others*, the Supreme Court held that the construction which carries on objectives of the Act is to be preferred. In case the objects of the Act are that the tiller of the land is to be conferred with the rights of ownership there can be no manner of doubt that the legislature having not provided for extinguishment of tenancy, in the absence of specified class of persons, the same shall devolve on the Ors. natural heirs, in accordance with the personal law applicable to the tenant, which in this case would be the Hindu Succession Act, 1956. The question posed thus is answered in affirmative.

28. The Defendant-Appellants being the daughters and admittedly the heirs of, deceased tenant, in accordance with the Hindu Succession Act, in the absence of Ors. persons enumerated in Clauses (a) to (d) of Section 45 of the Act rightly inherited the rights of Bhagwana tenant. On and from the date when the Himachal Pradesh Tenancy and Land Reforms Rules, 1975 came into force, which is the date notified within the ambit of Sub-section (3) of Section 104 of the Act, all rights, title and interests of the Plaintiff-Respondents stood extinguished and vested in the Defendant-Appellants. Plaintiffs, as such, had no right to claim a decree for possession against the Defendant-Appellants. Their suit was liable to be dismissed. In view of this position, the judgments and decrees passed by the Courts below are liable to be set aside.

29. Resultantly, the appeal succeeds. Judgments and decrees passed by the Courts below are set aside. The suit of the Plaintiff-Respondents is dismissed, leaving the parties to bear their respective costs.