

1877

---

ABDUL  
RAHIM  
v.  
RACHA RAI.

review of judgment may be allowed. "Any other good or sufficient reason" is permitted by s. 376, and s. 378 allows a review to be granted when "necessary to correct an evident error or omission, or otherwise requisite for the ends of justice." In this case it would seem that some very material documents on which the first Court had relied had been summarily discredited without being inspected by the lower appellate Court, which, if it did not think proper to call for and inspect the record of the case in which copies of those documents were to be found, might at least have given the plaintiffs permission to file copies of them. The application for review of judgment urged, moreover, that the lower appellate Court, in its decision of the 29th November, 1875, had erred in declaring the report of the commissioner appointed by the Munsif for the purpose of making a local enquiry to be unworthy of reliance, because he was a muharrir of the Munsif's Court, and it is presumable that the lower appellate Court was influenced by this argument in granting the application. On the whole I see no sufficient reason for holding that the lower appellate Court exceeded the discretionary power vested in it by the law in granting the review applied for, or that the reasons assigned by it for its final decision are insufficient in law. I would, therefore, dismiss the appeal with costs.

*Appeal dismissed.*

---

1877  
February 16.

## APPELLATE CIVIL.

---

*Before Sir Robert Stuart, Kt., Chief Justice, and Mr Justice Oldfield.*

BISHMESHUR SINGH, (PLAINTIFF) v. MUSAMMAT SUGUNDI, (DEFENDANT).\*

*Act XVIII of 1873, ss. 93, 189, 191—Appeal to Judge—Proprietary right—Rent—Revenue—Sub-proprietor—Settlement.*

Where the defendant pleaded in answer to plaintiff's suit for arrears of rent, that defendant no longer held as tenant but as sub-proprietor under settlement made direct with defendant by settlement officer, held that under s. 189 of Act XVIII of 1873 the suit involved a question of proprietary title, and that an appeal lay to the Judge of the district, although the amount in suit was less than Rs. 100.

---

\* Special Appeal, No. 1271 of 1876, from a decree of S. S. Melville, Esq., Judge of Cawnpore, dated the 8th August 1876, affirming a decree of G. L. Lang, Esq., Collector of Fatchpur, dated the 3rd May 1876.

This was a suit to recover arrears of rent for the kharif of 1283 Fasli under s. 93 of Act XVIII of 1873, on the strength of a decree passed by the High Court in a previous suit between the parties. The defendant pleaded that since the date of that decree there had been a sub-settlement made by the settlement officer for the revenue of the land in dispute, direct with the defendant, of whose malikana holding the land formed part, and that, therefore, there could be no liability for rent to the plaintiff. The Assistant Collector decreed the claim, but on appeal by the defendant, the Collector of Fatchpur reversed the Assistant Collector's decision, holding that defendant could not be made liable, as tenant to plaintiff, for rent, since defendant's status as a sub-proprietor had been definitely determined by the settlement officer, and revenue became payable to the plaintiff, as lambardar, on land previously not assessed. The Collector further held that plaintiff's remedy lay in an application for revision of the settlement proceedings.

1877

---

BISHESHUR  
SINGH  
v.  
MUSANMAT  
SOGUNDHIL

The Judge of Cawnpore, on appeal by plaintiff, ruled that as the Collector considered the defendant's status had been definitely determined and the value of the suit being less than Rs. 100, no appeal lay to the Judge under s. 189 of Act XVIII of 1873.

A division bench of the High Court, in special appeal by the plaintiff, reversed the decision of the Judge in the following judgments, which ruled that the suit involved a question of proprietary title, and that therefore an appeal did lie to the Judge.

*Lala Lalta Prasad* for appellants.

Pandit *Ajudhia Nath* and the *Junior Government Pleader* (Babu *Dwarika Nath Banerji*) for respondents.

STUART, C. J.—In this case I am clear that there is a question of proprietary title within the meaning of ss. 93 and 189, Act XVIII of 1873, and that the Judge was bound to hear and determine the appeal to him, and that being so, this special appeal was under s. 191 of the same Act competently preferred. The suit is to recover Rs. 5 on account of arrears of rent, and in defence defendant asserts a sub-proprietary right in respect of which a sub-settlement was made with her for revenue, and that she is not a tenant liable to pay rent. Thus a question of title is directly

1877

BISHESHUR  
SINGH  
v.  
MUSAMMAT  
SUGUNDBI.

raised, and it is unnecessary to say more. We therefore allow this appeal, reverse the order of the Judge, and remand this case for disposal on the merits under s. 351 of Act VIII of 1859. Costs to abide the result.

OLDFIELD, J.—The first and second pleas in appeal are valid. The plaintiff sues defendant as a tenant for the recovery of arrears of rent, and the defendant pleaded that she held the land as a proprietor subject to the payment of revenue, but not of rent. The Collector decided that the settlement officer had determined that she was a sub-proprietor liable for revenue, and he held that this decision of the settlement officer was final and binding until set aside, and he therefore dismissed the suit. The settlement officer has thus in this suit determined the proprietary title of the defendant on the basis of the settlement officer's order. His decision *in this suit* is not the less a decision of proprietary title, because another Court may have already in another case decided the same. His decision no doubt is one of fact, whether the settlement officer has made any such order, but it involves for the purposes of this suit a decision of title, when it determines the effect of the settlement officer's order on a title. It is possible that the order may have been wrongly interpreted, or is not binding, though I offer no opinion on this point. An appeal will therefore lie to the Judge, and I would reverse the decree and remand the case, under s. 351 of Act VIII of 1859, for a trial on the merits. Costs to abide the result.

*Decree set aside and cause remanded.*

## APPELLATE CIVIL.

1877  
March 14.

*Before Mr. Justice Spinkie and Mr. Justice Oldfield.*

BINDA PRASAD AND OTHERS, (APPELLANTS) v. AHMAD ALI, AND ANOTHER,  
(RESPONDENTS).\*

*Execution—Acquiescence.*

Certain property was attached in execution of a decree against the judgment-debtor in the year 1847. This attachment was set aside on the application of persons claiming the property as their own. These persons were sued, together

\* Miscellaneous Special Appeal, No. 76 of 1876, from an order of Babu Ram Kali Chaudhri, Subordinate Judge of Cawnpore, dated the 4th November 1876.