

The Revenue Court decided that no right of occupancy had accrued, since twelve years had not expired since the expiration of the ten years which was the term of the lease, *i. e.*, from 1864 to 1874, but it went on to decide that, with reference to the entry of the word *istimrari*, the lease must be held to have been given in perpetuity. There is clearly some inconsistency in the finding, which makes the lease out to be at the same time for a term of ten years and in perpetuity, but we are not concerned with the point now. The lower appellate Court has dismissed the suit on the ground that it is barred with reference to the decision of the Revenue Court. The decision of the lower appellate Court cannot be maintained. The question in this suit is the fraudulent insertion in a deed of a word by which the intended character of the deed is altered, and the object of the suit is to have the terms of the deed corrected. This is a matter peculiarly within the jurisdiction of a Civil Court, and was not one of those which a Revenue Court was competent finally to decide in the matter of an application made under s. 39, Act XVIII of 1873, however sufficient the decision may have been for the purpose of disposing of that application. We reverse the decree of the lower appellate Court and remand the case for trial on the merits. Costs to follow the result.

1879

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 HUSAIN  
 SHAH  
 v.  
 GOPAL RAJ
 

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*Before Mr. Justice Spinkie and Mr. Justice Olfeld.*

 1879  
 July 15.
 

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KANAHIA AND ANOTHER (PLAINTIFFS) v. RAM KISHEN AND  
 OTHERS (DEFENDANTS).\*

*Jurisdiction of Civil and Revenue Courts—Act XVIII of 1873 (N. W. P. Rent Act),  
 ss. 93, 95.*

The plaintiffs in this suit claimed a declaration of their proprietary right in respect of certain lands and possession of the lands, alleging that the defendants were their tenants, and liable to pay rent for the lands. The defendants, while admitting the proprietary right of the plaintiffs, alleged that they paid the revenue assessed on the lands, that they paid no rent, and that the plaintiffs were not entitled to rent, and they styled themselves tenants at fixed rates. *Held*, on appeal, that, as the defendants substantially denied the proprietary title of the plaintiffs, and set up a title of their own, the claim of the plaintiffs for a declaration of their proprietary right and of their right to demand rent was a matter which the Civil Court must decide, leaving the plaintiffs to sue in the Revenue Court to eject the defendants, and to recover rent, if the position of the defendants as tenants were established.

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\* Second Appeal, No. 207 of 1879, from a decree of Maulvi Nasir Ali Khan, Subordinate Judge of Saharanpur, dated the 11th January, 1879, reversing a decree of Babu Ishri Prasad, Munsif of Deoband, dated the 13th September, 1878.

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THE facts of this case are sufficiently stated for the purposes of this report in the judgment of the High Court, to which the plaintiffs appealed from the decree of the lower appellate Court dismissing the suit as cognizable by a Court of Revenue and not by a Civil Court.

Munshi *Hanuman Prasad*, for the appellants.

Pandit *Nand Lal*, for the respondents.

The judgment of the Court (SPANKIE, J. and OLDFIELD, J.) was delivered by

OLDFIELD, J.—The plaintiffs sue to obtain possession and a declaration of their proprietary right in respect of 37 bighas, 13 biswas of land, alleging that defendants are their tenants and liable to pay rent for the land. The defendants, while professing to admit the plaintiffs' title to be owners, say that they pay the revenue on this land, pay no rent, and deny the plaintiffs' right to rent, and they call themselves tenants at fixed rates, and they aver that the case is not one cognizable by the Civil Court. The Munsif has disallowed this objection: he holds that their defence substantially amounts to a denial of the proprietary title of the plaintiffs and sets up their own title, and he proceeds to decide in favour of the plaintiffs' title and right to demand rent from the defendants, while he refers the plaintiffs to the Revenue Court to eject the defendants and to recover rent from them. The lower appellate Court has reversed the decree and dismissed the suit on the ground that the Civil Court has no jurisdiction to try it. We are of opinion that the view taken by the Munsif is correct. The defendants do in substance deny the plaintiffs' title as owner and set up their own, when they aver that they have a right to pay the revenue on the land to the Government, and are not liable to pay rent to the plaintiffs. The latter have clearly a cause of action for obtaining a declaration of their right to be owners and to demand rent from the defendants, and this matter is one which the Civil Court must decide, leaving the plaintiffs to have recourse to the Revenue Court to eject the defendants, and to recover rent from them, supposing their position as tenants is established. We reverse the decree of the Subordinate Judge, and remand the case for trial on the merits. Costs to follow the result.

*Cause remanded.*