

1879  
July 14.

Before Mr. Justice Oldfield and Mr. Justice Straight.

HUSAIN SHAH AND OTHERS (PLAINTIFFS) v. GOPAL RAI AND ANOTHER  
(DEFENDANTS).\*

*Land-holder and Tenant—Determination of title under a lease by a Revenue Court on an application under s. 39 of Act XVIII of 1873 (N.-W. P. Rent Act)—Res judicata.*

The plaintiffs in this suit, land-holders, had caused a notice of ejectment to be served on the defendants, their tenants under a lease, on the ground that the tenancy had expired. The defendants applied to the Revenue Court, under s. 39 of Act XVIII of 1873, contesting their liability to be ejected on the ground that the lease was a perpetual lease. The Revenue Court held, with reference to the word "*istimrari*" contained in the lease, that the lease was perpetual, and the defendants were not liable to be ejected. The plaintiffs thereupon sued in the Civil Court for the cancellation of the word "*istimrari*" in the lease, on the ground that it had been inserted fraudulently. *Held*, on appeal from the decree of the lower appellate Court dismissing the suit as barred by the decision of the Revenue Court, that it was not so barred, the matter in dispute being peculiarly within the jurisdiction of the Civil Court, and not one which a Revenue Court was competent finally to determine on an application under s. 39 of Act XVIII of 1873.

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 their suit.

The *Junior Government Pleader* (Babu Dwarika Nath Banarji) and Babu Jogindro Nath Chaudhri, for the appellants.

Munshi Hanuman Prasad, for the respondents.

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

OLDFIELD, J.—The relief sought by the plaintiffs is to have the word "*istimrari*," or perpetual, cancelled in a deed of lease executed on the 19th July, 1864, on the ground that this word was fraudulently entered in the deed by the defendants in collusion with the writer of the deed. It appears that the lessees, who are the defendants, respondents, before us, applied in the Revenue Court, under s. 39 of Act XVIII of 1873, to contest a notice of ejectment which the plaintiffs, appellants, had served on them, and in that matter they pleaded that they had a right of occupancy and held under a perpetual lease.

\* Second Appeal, No. 75 of 1879, from a decree of Babu Kashi Nath Biswas, Subordinate Judge of Meerut, dated the 8th November, 1878, affirming a decree of Muhammad Mir Badshah, Munsif of Bulandshahr, dated the 6th December, 1877.

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 R.
 

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

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 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.