

ing dispossessed by adverse title; and until the event arose which was contemplated by the covenant, the cause of action of the present plaintiffs could not arise. Now that event did not arise according to our construction of the covenant until 1882, when there was a loss owing to the adverse decision of the litigation. After the decision in 1882, the defendants were called upon specifically to perform their covenant, and this action was then brought within three years of their refusal to perform it. It was therefore brought within the time fixed by art. 113, sch. ii, Limitation Act. The appeal must be dismissed with costs.

STRAIGHT, J.—I am of the same opinion, and I concur with the learned Chief Justice that this suit was not barred by limitation.

MAHMOOD, J.—I agree with the learned Chief Justice.

Appeal dismissed.

APPELLATE CIVIL.

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August 11.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Mahmood.

GIRWAR SINGH AND ANOTHER (DEFENDANTS) v. SITA RAM (PLAINTIFF).*

Jurisdiction—Remand—Act XII of 1881 (N.-W. P. Rent Act), s. 208.

An Assistant Collector dismissed a suit without considering the merits, on the ground that it was not cognizable by a Revenue Court. On appeal, the District Judge held that it was unnecessary to determine the question of jurisdiction as he had power in any event under s. 208 of the N.-W. P. Rent Act, to remand the suit to the Assistant Collector, and he remanded it accordingly.

Held that the Judge had rightly construed s. 208 of the Rent Act, and that the remand was proper. *Ahmaduddin Khan v. Majlis Rai* (1) distinguished.

THIS was a suit under s. 93 (g) of the N.-W. P. Rent Act (XII of 1881) by a lambardar against certain co-sharers for arrears of Government revenue paid by him on account of their shares. The suit was dismissed by the Assistant Collector of Aligarh, without entering upon the merits, on the ground that, when it was ins-

* First Appeal, No. 95 of 1888, from an order of H. E. Evans, Esqr., District Judge of Aligarh, dated the 27th March, 1888.

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titled, the defendants were no longer co-sharers in the village, and that he had therefore no jurisdiction to entertain it. The plea as to jurisdiction was raised before the Assistant Collector by the defendants. The plaintiff appealed to the District Judge of Aligarh, who observed:—"Under s. 208 of the Rent Act, this Court has power to remand the suit to the Revenue Court, whether that Court was competent to entertain the suit or not. It therefore is superfluous to determine the question whether the Revenue Court was competent or not to hear the suit. In any case I am clearly of opinion that the issues raised are such as would be more appropriately decided by a Revenue Court. I therefore under s. 562 of the Code of Civil Procedure and s. 208 of the Rent Act remand the case to the Court of the Assistant Collector with directions to re-admit the suit and proceed to investigate and dispose of the suit on the merits."

The defendants appealed to the High Court from the order of remand.

Mr. A. H. Reid, for the appellants.

Babu Jogindro Nath Chaudhri, for the respondent.

EDGE, C. J.—I think the District Judge of Aligarh is perfectly right in the construction he put on s. 208 of the Rent Act. Even if it was not strictly a Revenue Court suit, I do not think that the judgment of the Full Bench in the case of *Ahmaduddin Khan v. Majlis Rai* (1) shows that the District Judge had not power to remand the case to the Revenue Court. The question before the Court there was whether the District Judge, believing that the suit was brought in the wrong Court, was right in dismissing the suit altogether, or whether he ought not to have remanded it to the Court which he thought had jurisdiction. I infer from the judgment of my brothers Straight, Brodhurst and Tyrrell that that was all they meant to decide. I think the appeal should be dismissed with costs.

MAHMOOD, J.—I agree with the interpretation which the learned Chief Justice has placed upon s. 208 of the Rent Act, and agree—

(1) I. L. R., 5 All. 438.

ing with him I need say nothing further except that the order which he has passed is the only order which could be passed in the case.

Appeal dismissed.

Before Mr. Justice Straight and Mr. Justice Mahmood.

INDAR KUAR (PLAINTIFF) v. GUR PRASAD AND ANOTHER (DEFENDANTS). *

Civil Procedure Code, ss. 28, 45—Mis-joinder of causes of action.

The judgment of the majority of the Full Bench in *Narsingh Das v. Mangal Dubey* (1), except in its general observations as to the provisions of the Civil Procedure Code relating to joinder of parties and causes of action, proceeded upon and had reference to the special circumstances of the case, and to the allegations made by the plaintiff in his plaint, and was not intended to be carried further.

In a suit for possession of immoveable property part of which had been usufructuarly mortgaged by defendant No. 1 to defendant No. 2, the plaintiff alleged that the first defendant had no title to make such a mortgage, while both defendants maintained such title.

Held that inasmuch as the title of defendant No. 2 was derived from defendant No. 1, and stood or fell with the failure or success of the plaintiff's claim against the latter, there were not two causes of action but one, namely, the infringement of the plaintiff's right by the defendant No. 1, and hence the suit was not bad for misjoinder of causes of action.

THE facts of this case are sufficiently stated in the judgment of the Court.

Pandit *Moti Lal Nehru* and Pandit *Bishambhar Nath*, for the appellant.

Munshi *Ram Prasad*, for the respondent.

STRAIGHT, J.—The plaint in this case is somewhat prolix, but stripped of superfluous details and allegations, it comes to this, that as to the defendant Gur Prasad, the plaintiff seeks to have her title declared to and to obtain possession of a 4 annas 8 pies share in mauza Lehra, and as to the defendant Bank, to eject it as a trespasser in possession from 2 annas 8 pies out of the 4 annas pies of Sisai Sipah, which it professes to hold under a usufructuary mortgage executed in its favour by the defendant Gur Prasad, by

* First Appeal, No. 85 of 1887, from a decree of Babu Promoda Charn Banerji, Subordinate Judge of Allahabad, dated the 22nd March, 1887.