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December 5.

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

MAHESH RAI AND OTHERS (DEFENDANTS) *v.* CHANDAR RAI AND OTHERS (PLAINTIFFS.)*

Jurisdiction—Civil and Revenue Courts—Suit for declaration that tenants are shikmis and not occupancy tenants, and that their holdings are plaintiffs' sír land—Act XII of 1881 *(N.-W. P. Rent Act), ss.* 10, 95 *(a)—Act XIX of* 1873 *(N.-W. P. Land Revenue Act), s.* 241—*Act I of* 1877 *(Specific Relief Act), s.* 42.

The effect of s. 95(*a*) and s. 10 of the North-Western Provinces Rent Act (XII of 1881) is to deprive the Civil Courts of jurisdiction to take cognizance of any suit the object of which is to declare, as between the zamíndár and tenants, the status of the tenants.

A Civil Court has no jurisdiction to entertain a suit in which, the defendants being admittedly the tenants of the plaintiffs, the plaintiffs pray for a declaration that certain entries of the defendants in the revenue records as occupancy tenants, and certain orders of the Revenue Courts maintaining those entries, be set aside, and that the defendants are shikmis and not occupancy tenants, and that the land in question is the plaintiffs' sír land. Such a suit cannot be brought within the Civil Court's jurisdiction by dropping all the reliefs claimed except the last mentioned declaration, that being merely of importance as incidental to the previous ones, and as a roundabout mode of obtaining a declaration that the defendants are not the plaintiffs' occupancy tenants.

Per Edge, C.J., and Mahmood, J.—Whether the last-mentioned prayer is one which could be brought under s. 42 of the Specific Relief Act, *quære*.

Per Straight, J.—The suit might also be considered as one to set aside orders passed by the Settlement Officer in the discharge of his duty for the purpose of correcting the jamabandi as a part of the record of rights, and thus the jurisdiction of the Civil Court was barred by s. 241 of the North-Western Provinces Land Revenue Act (XIX of 1873).

THIS suit was instituted under the following circumstances. The plaintiffs were zamíndárs and the defendants were tenants of certain villages in taluqa Unjiar in the district of Gházipur. The holding occupied by the defendants was 17 bíghas in extent, and at the settlement of 1840 was recorded as the sír land of one Chattar Rai, the ancestor and predecessor in title of the plaintiffs Chandar Rai and Siparas Rai. The names of Chandar Rai and Siparas Rai, and of their co-sharers Hira, Jaimangal, Bhairo, Rambandan, and

* Second Appeal No. 839 of 1887 from a decree of G. J. Nicholls, Esq., District Judge of Gházipur, dated the 15th April 1887, reversing a decree of Pandit Kashi Narain, Subordinate Judge of Gházipur, dated the 29th April 1886.

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Ram Prasad were recorded in the jamabandi, from 1857 to 1862, in respect of the 17 bíghas, which were always shown as sír land. In 1862 a change was made, the defendants being then recorded in the jamabandi as occupancy tenants in respect of the 17 bíghas, and from that time the land was no longer described as sír. It was entered as "share of Chandar Rai, Siparas Rai, Kali Charan Rai, Kauleshar Rai, kashtkars." In or about the year 1288 fasli (1881 A.D.) at or shortly before the revision of the settlement of the district, the plaintiffs became aware of the nature of the entry in the jamabandi, and they filed an objection in the Settlement Department to the effect that the land was their sír land, and that the defendants were in possession as their shikmi sub-tenants, and not as occupancy tenants, and that the entry of the defendants' names as occupancy tenants had been brought about fraudulently and by collusion with the patwári. The objection came before the Assistant Settlement Officer, whose order thus described the issue between the parties: "The plaintiffs' claim is that the sír belongs to them, and that the defendants are shikmi sub-tenants, and that the plaintiffs receive rent at the rate of Rs. 5. The defendants plead that 17 bíghas in six mauzas are held by them as principal tenants at a rent of Rs. 17-13-0, at the rate of Re. 1 per bígha; that the groves Nos. 295, 111, and 112 are within their cultivatory holding, and that Nos. 295, &c., have been planted by their ancestors."

The Assistant Settlement Officer decided this issue in favour of the plaintiffs, and he held that the 17 bíghas were their sír land, of which the defendants were in possession as shikmis only, and he directed that the jamabandi should be amended accordingly. The defendants appealed from this decision to the Settlement Officer, who, by an order dated the 13th August 1884, reversed the Assistant Settlements Officer's order, and held that the defendants were occupancy tenants of the 17 bíghas, which were not sír land. On further appeal, this decision was affirmed on the 6th November 1884 by the Commissioner of Benares, and on the 27th March 1885 by the Board of Revenue.

On the 24th November 1885, the plaintiffs instituted the present suit in the Court of the Subordinate Judge of Ghâzipur. The plaint, after reciting the orders passed by the Revenue Courts, continued :—

"As this finding of the Revenue Department clearly affects our rights injuriously, and as there is no other means of getting relief except by instituting a suit in Court, therefore the plaintiffs pray judgment as follows :—

"That a declaratory decree be passed in plaintiffs' favour and against the defendants in respect of 17 bîghas 1 biswa 13 dhurs of sír land as per numbers given below, situated in taluqa Unjiar, pargana Garh, valued at Rs. 2,135-0-0, and it be declared that the land claimed is the plaintiffs' sír; that the defendants' allegation and adverse possession set up by them in respect of the said land be held as null and void, and that the whole of the Court costs be allowed.

"That the judgment of the Revenue Court, so far as it is injurious to the plaintiffs' rights, be declared as set aside and of no effect.

"That it should also be decided that the defendants' possession is as sub-tenants *(asami shikmis)* under a settlement for a short period, which in no way affects our sír land.

"The cause of action arose on the 13th August 1884, when the defendants were held to be occupancy tenants."

The Court of first instance (Subordinate Judge of Ghâzipur) dismissed the suit. The lower appellate Court (District Judge of Ghâzipur) set aside the first Court's decree and allowed the claim.

The defendants appealed to the High Court. Their first ground of appeal (repeating the contentions which they had raised in both the lower Courts) was :—

"That the tenancy of the appellants in respect of the land in suit belonging to the plaintiffs-respondents being admitted, it was for the Revenue Courts to determine the nature of such tenure, and the suit is not cognizable by the Civil Courts."

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Mr. *C. H. Hill* and Pandit *Sundar Lal*, for the appellants.

The Hon. *T. Conlan*, Mr. *G. T. Spankie*, and Mr. *Amir-ud-din*, for the respondents.

The case came for hearing before Edge, C. J., and Brodhurst, J., who passed the following order:—

"We refer this case to the Full Bench of five Judges, so far only as the question of the jurisdiction of the Civil Court is concerned."

At the hearing before the Full Bench, Mr. *G. T. Spankie*, on behalf of the appellants, withdrew the second and third prayers contained in the plaint; and the case was argued solely on the question whether the suit was maintainable in a Civil Court as a suit for a declaration that the land in dispute was the plaintiffs' sír land.

EDGE, C.J.—In this case the plaintiffs are zamíndárs of a mahal, and the defendants were admittedly tenants of the plaintiffs. I say admittedly, because there is no question here of suing a trespasser. The plaintiffs said that the defendants were their tenants, and the defendants admitted that they were tenants of the plaintiffs. The only question between the parties was whether the defendants were, as the plaintiffs said they were, the *shikmi* tenants of the plaintiffs or the occupancy tenants of the plaintiffs as the defendants alleged that they were. The question arose on the revenue side. On that side it was decided in three different appeals, ending with the Board of Revenue, that the defendants were occupancy tenants of the plaintiffs. It is not material whether that point was ever decided on the Revenue side or not: the question is, can this suit be maintained in a Civil Court? This suit which the plaintiffs have brought, is in fact one the object of which is to get a declaration that the defendants are not the occupancy tenants of the plaintiffs, but merely their *shikmi* tenants, and, as leading up to that end, it is asked as part of their prayer that it should be declared that the land which is cultivated by the defendants is the *sir* of the plaintiffs. I say that that is purely an

incidental part of the prayer in this suit, because the suit really turned on the question of the *status* of the defendants as tenants; the question of *sír* land or not is merely a matter incidental. The lower appellate Court on appeal went at great length into the evidence relating to the land in question from the date of the settlement of 1840, and came to the conclusion that the defendants were not occupancy tenants, but *shikmi* tenants. In fact the only point which the lower appellate Court did try was the real point in dispute between the parties in the case, and that was, what was the *status* of the defendants. The case came in second appeal before my brother Brodhurst and myself. It was contended before us, as has been contended here to-day, that the suit is not one which is cognizable by the Civil Court, and that it is a suit, if maintainable at all, for the Revenue Court, and is not maintainable in the Civil Court.

It is quite clear to my mind that the effect of s. 95, cl.(*a*), and s. 10 of the Rent Act (XII of 1881) is to deprive the Civil Court of jurisdiction to take cognizance of any suit the object of which is to declare, as between the zamíndárs and tenants, the *status* of the tenants. Under s. 10 of the Rent Act, the Collector is the person who has to decide whether a tenant is a tenant at fixed rate or an ex-proprietary tenant or an occupancy tenant, or whether he is some other kind of tenant who has got no right of occupancy, and under s. 95 of the Rent Act, that question is tied up to the Revenue side, and a Civil Court has got no jurisdiction in the matter. Mr. *Spankie* when the case came on to-day informed us on behalf of his clients, the plaintiffs in the suit, that he abandoned that part of the prayer in the plaint which asked for a declaration that the entry in the Revenue record be set aside, and that part of the prayer which asked for a declaration that the defendants were *shikmis* and not occupancy tenants. What remains then after such an abandonment? There remains of the prayer really the incidental and tail end; an incidental portion which could only be of importance where the plaintiffs were trying to obtain one or other of the declarations, the prayer for which Mr.

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Spankie has abandoned. I do not think that in a case between a landlord and a tenant the landlord can come into the Civil Court and can ask for a declaration that the land is his *sir*, if the defendant is in occupation of it; because the only object of having such declaration would be to get the Court in a roundabout way to say that the defendant was not the occupancy tenant of the landlord. Further, I very much doubt whether such an emasculated prayer as Mr. *Spankie* has put before us here is one which could be brought under s. 42 of the Specific Relief Act. The legal character of the plaintiffs as landlords is not denied; what are then their rights which they want a declaration in respect of? The only declaration would be a right to have it declared that it is their *sír* land freed from the right of the defendants as occupancy tenants. That is to decide that the defendants are not occupancy tenants, and that is a question of tenancy, which is not one for a Civil Court, but for a Revenue Court to decide.

Whether we look at this suit as it first came to this Court and as it was referred to the Full Bench, or whether we look upon the suit as emasculated by the abandonment of the other prayers by Mr. *Spankie*, the suit in either case is not maintainable in a Civil Court. I do not wish it to be inferred that I have any doubt that a Civil Court has jurisdiction, as between a zamíndár and a trespasser, to decide whether land is *sír* or not. But this is quite a different case. This is a case between persons who are admittedly landlord and tenant. The real object of the suit is to get a Civil Court to interfere with the jurisdiction of the Revenue Courts. This case should be referred back to my brother Brodhurst and myself for decision with an expression of opinion that the suit, as originally brought, or in its emasculated form, is not one within the jurisdiction of the Civil Courts.

STRAIGHT, J.—As I think it very desirable in this case with regard to the question of the jurisdiction of the Civil and Revenue Courts that the reasons for our decision should appear very clearly, I wish to state what I understand the facts are out of which the suit now before us has originated. It seems that in respect of the

land to which it relates the defendants, so far back as the year 1862, were recorded in the *jamabandi* as occupancy tenants, and that somewhere about 1288 fasli the plaintiffs first ascertained that this entry stood in this way in the *jamabandi*. At or soon after that time the revision of the settlement of this district was proceeding, and objection was taken by the present plaintiffs to this entry in the *jamabandi*. That objection was heard in the first instance by the Deputy Settlement Collector, and he came to the conclusion that the land was, as claimed by the plaintiffs, their *sír* land, and that the defendants were in occupation of it as *shikmis*, and he proceeded to direct that the entries should be amended accordingly. From that decision of his there was an appeal, as by law provided, to the Settlement Officer Mr. Irvine, and he, after going fully into the matter, upon the 13th August 1884, reversed the Deputy Settlement Officer's decision, and held that the defendants were occupancy tenants and that the land to which the plaintiffs' application related was not *sír* land. From his decision there was an appeal to the Commissioner; and the Commissioner upheld that view. From the Commissioner's decision there was an appeal to the Board of Revenue and the Board took the same view, and accordingly in the *jamabandi* stand the names of the defendants as occupancy tenants at a particular rate of rent. Having failed in all their proceedings in the Revenue Courts, the plaintiffs then came into Court with the present suit, and by their plaint what they sought was to have it declared that the land claimed is the plaintiffs' *sír*; that the defendants' allegation of adverse possession set up by them was null and void; that the judgment of the Revenue Court so far as it is injurious to the plaintiffs' right be set aside and of no effect, and that it should be decided that the defendants' possession "is that of sub-tenants, which in no way injuriously affects their *sír* land."

To-day at the commencement of the argument of this reference, which is concerned solely with the question of jurisdiction, Mr. *Spankie* very ingeniously withdrew that portion of his plaint which in terms asked for a declaration that the defendants were the *shikmi* tenants of the plaintiffs. For my own part it does not seem to me

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that that withdrawal alters the real nature and character of this suit, which, as any one who reads the plaint carefully for a moment must feel, is nothing more than a suit brought for the purpose of getting out of the adverse orders passed by the Revenue Courts, and obtaining a declaration to the effect that the land is of such a character that the defendants could not, and cannot, be the occupancy tenants of that land. I quite agree with what has been said that in order to oust the jurisdiction of the Civil Courts there must be a clear declaration in the statute that the jurisdiction of that Court is excluded. Whether I look upon this suit as a suit in the nature of that to which s. 95(*a*) would apply, *viz.*, that it really involves questions a consideration of which could be made the subject of an application to determine the nature or class of the tenants' tenure, or whether I regard it as of a different character and as assailing something done by the Settlement Officer, it appears to me that it falls within a category of cases as to which the jurisdiction of the Civil Court is specifically and directly prohibited by law. Of course in all these cases language can be found to put a plaint into such a shape as to make it appear as if the suit was of a civil nature. But whether as dealing with an application such as that which is mentioned in cl. (*a*), s. 95, or making such an order as a Settlement Officer can make under s. 53 and the following sections, it must necessarily be a part of that officer's duty to ascertain, among other things, what was the nature of the land in respect of which he had to declare the character of the tenant's tenure. As I put the illustration to Mr. *Spankie* during the course of the argument, so I repeat it now. Suppose a zamíndár comes into Court and seeks to eject a tenant upon the ground that he is an occupancy tenant paying a specified rate of rent. The defendant says :—"I am not an occupancy tenant, but I am ex-proprietary tenant." Now, for the purposes of determining whether the ejectment should be granted, it would be the duty of the Revenue Officer to determine what was the precise nature of the tenure. According as it was found whether the tenant was an occupancy tenant or an ex-proprietary tenant, so would the question of his being an occupancy or an ex-proprietary tenant be set at rest. I asked Mr. *Spankie* whether a

tenant against whom a Revenue Court had declared that he was not an ex-proprietary tenant could go into the Civil Court to have it declared that he was an ex-proprietary tenant and that the land was once his *sír* land. Mr. *Spankie* says "Yes." I do not think he can. It seems to me that would be inviting a Civil Court to take cognizance over a matter which is exclusively within the jurisdiction of the Rent Court. In this particular case the orders of the Settlement Officer were made in the discharge of his duty as a Settlement Officer for the purpose of correcting the jamabandi which is a portion of the record of rights, and in the course of that duty it was his business to determine the class of the tenants' tenure and the rate of rent payable by them. Looking at the case from this point of view, it is in my opinion prohibited by s. 241, Land Revenue Act, and the jurisdiction of the Civil Court is excluded in respect of such a suit as the present. I concur in the order proposed by the learned Chief Justice.

BRODHURST, J.—I concur with the learned Chief Justice and my brother Straight.

TYRRELL, J.—I also concur with the learned Chief Justice and my brother Straight.

MAHMOOD, J.—I also concur in the order made by the learned Chief Justice in this case. I understand that the solitary question which has been referred to the Full Bench in this case is whether or not, upon the pleadings of the parties in this litigation and the frame of the suit, and especially with reference to the prayers contained in the plaint, this was or was not a suit cognizable by the Civil Court. To this solitary question, which, as I said, is the one which we have to consider, I give an answer in the negative. The relation of landlord and tenant is admitted to exist between the parties to the suit, and the defendants-appellants have obtained an adjudication from the Revenue Courts that they are occupancy tenants. It is clear after having read the plaint in the suit that the object of the suit was only of a declaratory character, especially what the learned Chief Justice terms the emasculated plaint, which is now before the Full Court after the withdrawal of the other

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reliefs by Mr. *Spankie*. The plaint so altered, and indeed without such alteration, amounted to what? It amounted to praying for setting aside orders made by the Revenue Courts in the admitted exercise of their jurisdiction as to the determination of the class of tenants to which this suit in the Civil Court relates, which determination is also, as I have already said, the object of the present litigation.

Dealing with the plaint in this manner, I have no doubt that it was a plaint such as a Civil Court might have entertained, if it could have entertained it subject to the limitations contained in s. 11 of the Civil Procedure Code itself. One of those restrictions involved in that very section is the turning point of the answer which we should give to the reference, *viz.*, s. 95 of Act XII of 1881 of which I consider it important to consider the first paragraph, because it is so worded as to include "any dispute or matter on which any application of the nature mentioned in this section might be made." And among them is cl. (*a*) of that same section which says "application to determine the nature and class of a tenant's tenure under s. 10." Now s. 10 of the Rent Act undoubtedly contemplates applications made by a tenant, and if the first part of s. 95 did indeed limit it to applications only by tenants for the purpose of determining the nature of their tenure, then I should have some difficulty in holding that the general provisions of s. 11 of the Civil Procedure Code were limited. But s. 95 of the Rent Act places the matter upon a broader footing, a footing which the learned Chief Justice has described, which might involve not only applications such as s. 10 contemplates, but also all disputes or matters such as might be required to be considered by reason of the jurisdiction which is thus exclusively given to the Revenue Court, or rather I should call it the Rent Court.

This being so, I have no doubt, and I agree with the learned Chief Justice in holding that it is a matter of no consequence what the Revenue Courts have actually done in connection with the exercise of jurisdiction as to the determination of the nature of the

tenure which the defendants-appellants before us have in respect of the land which forms the subject of the suit.

But what is important for me to state is that I also concur with the learned Chief Justice in that part of his judgment in which he referred to the provisions of s. 42 of the Specific Relief Act (I of 1877) as limiting, restricting or formulating the jurisdiction of the Civil Courts for the purpose of passing declaratory decrees in which no consequential relief was prayed for. It is clear that the object of the suit was of a wholly declaratory character. It did not pray for any consequential relief, even in the shape of the ouster of the defendants, and obviously because no such ouster could be claimed after the declaration by the Revenue Court as to the defendants-appellants being the occupancy tenants of the land. There could be no such claim of ouster upon the ground that the defendants were trespassers, because the case admittedly is one between landlord and tenant. That being so, it seems to me that, irrespective of anything in the Rent Act, s. 95, cl. (*a*), and s. 10 of the same enactment, the case in its present simple form could not be maintained.

Now this is the way in which I have dealt with the reference, and I wish to make no further observations beyond pointing out that the interpretation which I have placed upon cl. (*a*), s. 95 of the Rent Act, and s. 10 of that enactment, as implying that all disputes between parties to a litigation in which the relation of landlord and tenant is not only not denied but actually admitted, as in this case, must be dealt with by the Revenue Court under that enactment, is borne out by the preamble of that statute to the exact terms of which I wish to call attention. I am satisfied therefore that this was a suit not cognizable by a Civil Court, and I agree in the order which the learned Chief Justice has made.