

1893  
June 22.

*Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Aikman.*

BENI MADHO (DEPENDANT) v. GAYA PRASAD (PLAINTIFF).\*

*Jurisdiction—Civil and Revenue Courts—Set-off.*

A Court of Revenue cannot entertain a claim to a set-off unless such claim, if made the subject of a suit, would fall within its jurisdiction.

*Held* that in a suit in a Court of Revenue by a lambardár to recover rent, the defendant was not competent to plead as a set-off that certain arrears of *malikana* were due to him by the plaintiff.

THE facts of this case sufficiently appear from the judgment of the Court.

Babu *Rup Nath Banerji*, for the appellant.

Babu *Jogindro Nath Chaudhri*, for the respondent.

EDGE, C. J., and AIKMAN, J.—The suit in which this appeal has arisen was one for arrears of rent of an agricultural holding brought by the lambardár in a Court of Revenue. He sued for balances left unpaid in respect of each of three years. The defendant put forward a claim to have *malikana*, which he alleged was due to him, and which he alleged was equivalent to the unpaid balances, allowed as a set-off against the plaintiff's claim. The question before us is as to whether a Court of Revenue could entertain a set-off of this kind. The only two sections of Act No. XII of 1881 which apparently specifically refer to set-off are ss. 42 and 151, but those sections are not exhaustive. A Court of Revenue is a Court with a limited jurisdiction. It has not got the ordinary jurisdiction of a Civil Court, and a Court of Revenue cannot entertain a suit which it is not given jurisdiction to hear, nor can it entertain a set-off of a nature which is not within the ordinary jurisdiction of the Court. In a suit for rent a Court of Revenue could no doubt entertain a set-off in respect of revenue which the tenant had been obliged to pay. It could also, where the agreement for tenancy provided that certain payments, if made, would be deducted from rent, go into the question of set-off in respect of such payments, or, as in a case before

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\* Second appeal No. 77 of 1891, from a decree of H. W. Reynolds, Esq., Officiating District Judge of Banda, dated the 14th October 1890, modifying a decree of Munshi Nazar Muhammad Khan, Assistant Collector of Banda, dated the 9th July 1890.

the Court recently, in which the parties agreed that the interest of a bond should be deducted from the rent. The Court of Revenue cannot entertain a set-off in a case in which the assistance of a Civil Court would be required to ascertain a title or to determine whether there had been a contract not relating to the tenancy. No Court can entertain a set-off if it would not have had jurisdiction to entertain a suit if one had been brought to recover the money sought to be set-off. In this case the District Judge rightly determined that the Court of Revenue had no jurisdiction to entertain the set-off claimed. We dismiss the appeal with costs.

*Appeal dismissed.*

## REVISIONAL CIVIL.

*Before Mr. Justice Burkitt.*

J. J. GUISE AND OTHERS (APPLICANTS) v. JAISRAJ AND ANOTHER  
(OPPOSITE PARTIES).\*

*High Court's powers of revision—Practice—Civil Procedure Code ss. 281, 283, 484, 622.*

The High Court will not exercise its revisional jurisdiction so long as there is any other remedy open to the applicant.

Where a Subordinate Judge disallowed an application for the release of certain property which had been attached before judgment: *Held* that there being a remedy by suit under s. 283 of the Code of Civil Procedure, the High Court should not interfere with such order in revision. *Ittiachan v. Velappan* (1), *Sheo Prasad Singh v. Kastura Kuar* (2) and *Gopal Das v. Alaf Khan* (3) referred to.

The facts of this case sufficiently appear from the judgment of the Court.

The Hon'ble Mr. Colvin, Mr. A. H. S. Reid and Pandit Moti Lal, for the applicants.

Mr. T. Conlan, for the opposite parties.

BURKITT, J.—This is an application for revision of an order passed on the 26th of August 1892, by the Subordinate Judge of

\* Miscellaneous, No. 2 of 1893, application for revision under s. 622 of the Code of Civil Procedure.

(1) I. L. R. 8, Mad., 484.

(2) I. L. R. 10, All., 110.

(3) I. L. R. 11, All., 383.