

## FULL BENCH.

1898  
June 6.

*Before Sir John Edge, Kt., Chief Justice, Mr. Justice Tyrrell, Mr. Justice Knox,  
Mr. Justice Blair, Mr. Justice Burkitt and Mr. Justice Aikman.*

TARAPAT OJHA AND OTHERS (DEPENDANTS) v. RAM RATAN KUAR AND OTHERS  
(PLAINTIFFS).\*

*Act XII of 1881, ss. 93, 95, cls. (m) and (n)—Landlord and tenant—Jurisdiction—  
Civil and Revenue Courts.*

No suit will lie against a landlord in a Civil Court for the wrongful dispossession of a tenant from a holding to which Act No. XII of 1881 applies.

Where a plaint in a Civil Court alleges facts which, if true, would show that the dispute or matter involved in the suit was one to which s. 93 or s. 95 of Act XII of 1881 would apply, the plaint should be rejected under cl. (c) of s. 54 of the Code of Civil Procedure, or possibly in some cases returned under s. 57 of the same Code.

The plaintiffs, alleging themselves to be occupancy-tenants and to have been wrongfully dispossessed by their landlords, who had made a lease of the land in suit, sued the landlords and the lessees of such landlords for recovery of possession and for damages. *Held* that such suit was exclusively cognizable by a Court of Revenue. *Shimbu Narain Singh v. Bachecha* (1) approved.

THIS was a reference to a Full Bench of the whole Court made by a Bench consisting of Edge, C.J., and Aikman, J. The facts of the case were as follows:—

In this case the plaintiffs, who were cultivators, residents of a village in the Ballia district, brought this suit in the Court of the Subordinate Judge against the zamíndárs of the village and the zamíndárs' lessees to recover possession of certain land upon the following allegations:—That the land in suit, which was situated in a *dayara*, was their ancestral cultivatory holding; that it had at one time become submerged by the river, but had reappeared in 1287 F.; that after its reappearance, at the time of the recent settlement, the defendants, second party, in collusion with the patwári, got possession of the land and took a lease of it from the defendants, first party, and obtained mutation of names in their favour. The plaintiffs prayed for possession of the land in suit, for damages, and costs.

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\* Second Appeal No. 1262 of 1889, from a decree of F. W. Fox, Esq., Additional District Judge of Gházipur, dated the 11th April 1889, modifying a decree of Syed Akbar Husain, Subordinate Judge of Gházipur, dated the 1st September 1888.

(1) L. L. R., 2 All., 200.

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Both sets of defendants filed written statements in which they denied all the allegations of the plaintiffs, and further pleaded to the jurisdiction of the Civil Court to entertain the suit.

The Court of first instance held that as the relation of zamíndár and tenant was not admitted by the parties to exist between them, the jurisdiction of the Civil Court was not ousted; and it proceeded to try the suit on the merits and decreed the plaintiffs' claim.

The defendants appealed, taking the same objection to the jurisdiction of the Civil Court as they had taken in the Court of first instance.

The District Judge taking the view of the question of jurisdiction which had been held by the Court below, after referring issues to the Lower Court on the subject of the time when the land became submerged and the subsequent entries in the Revenue papers, ultimately confirmed the decree of the Lower Court.

The defendants, first party, then appealed to the High Court.

Munshi *Jwala Prasad*, Mr. *J. Simeon* and Munshi *Madho Prasad*, for the appellants.

Mr. *T. Conlan* and Pandit *Sundar Lal*, for the respondents.

The judgment of the Court (Edge, C.J., Tyrrell, Knox, Blair, Burkitt and Aikman, J.J.) was delivered by EDGE, C.J. :—

The suit in which this appeal has arisen was brought by the plaintiffs in the Court of the Subordinate Judge of Gházipur for possession of a cultivatory holding, for cancellation of a Settlement order, for invalidation of a lease, granted by the first six defendants to the second set of defendants, and for damages against the second set of defendants for wrongful dispossession. The plaintiffs allege that they were occupancy-tenants of the first set of defendants and that they had been wrongfully dispossessed by the defendants, and that the second set of defendants claimed title as alleged lessees under the first set of defendants. The first Court gave the plaintiffs a decree for possession and for a portion of the damages claimed. The second Court in appeal confirmed the decree for possession but dismissed the claim for damages. The defendants have appealed.

The question raised in appeal by the defendants is as to whether the Civil Court had jurisdiction to entertain the suit in respect of any portion of the claim. That question was referred to the Full Bench. The contention on behalf of the defendants is based upon s. 95, cls. (m) and (n), of Act No. XII of 1881. A large number of authorities have been cited in the course of the argument commencing with *Raghoobar Misser v. Sital* (1); *Abdul Aziz v. Wali Khan* (2); *Shimbhu Narain Singh v. Bachcha* (3); *Muhammad Abu Jafar v. Wali Muhammad* (4); *Sukhdak Misr v. Karim Chaudhri* (5); *Antu v. Ghulam Muhammad Khan* (6); *Gonga Ram v. Beni Ram* (7); *the Maharaja of Benares v. Angon* (8); *Sheodisht Narain Singh v. Rameshar Dial* (9); *Hari Das v. Gopi Rai* (10); *Mahesh Rai v. Chandar Rai* (11). We do not think it necessary to discuss at length in our judgment those cases. There has been a tendency on the part of certain Judges to hold in cases similar to the present case that unless the relationship of landlord and tenant is admitted on the pleadings between a plaintiff and defendant in a suit the Civil Court must necessarily have jurisdiction. On the other hand, other Judges have held that where the real dispute or matter between the parties was one in respect of which a suit under s. 93 of Act No. XII of 1881 might be brought or on which an application under s. 95 of that Act might be made and the plaintiff alleged in his plaint that the relationship of landlord and tenant or of tenant and landlord existed between him and the defendant, the jurisdiction of the Civil Court was ousted and the matter was one solely within the jurisdiction of a Court of Revenue. We may say, without going through those authorities, that we agree with the judgment of Turner, J., and Pearson, J., in the case of *Shimbhu Narain Singh v. Bachcha* (3). Applying s. 95 of Act No. XII of 1881 to this case, we are of opinion that no suit will lie against a landlord in a Civil Court for the wrongful

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(1) N.-W. P. H. C. Rep., 1875, p. 228.

(2) I. L. R., 1 All., 338.

(3) I. L. R., 2 All., 200.

(4) I. L. R., 3 All., 81.

(5) I. L. R., 3 All., 521.

(6) I. L. R., 6 All., 110.

(7) I. L. R., 7 All., 148.

(8) I. L. R., 7 All., 112.

(9) I. L. R., 7 All., 183.

(10) Weekly Notes, 1886, p. 137.

(11) I. L. R., 13 All., 17.

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dispossession of a tenant from a holding to which Act No. XII of 1881 applies. The wording of the first paragraph of s. 95 is not only wide, but is clear and specific, and it excludes the jurisdiction of any Court except the Court of Revenue from taking cognizance of any dispute or matter on which an application under cls. (m) or (n) of that section might be made. That section constitutes the Court of Revenue, the sole Court competent to decide any such dispute or matter and consequently the order of a Court of Revenue on an application under cls. (m) or (n) is final and cannot be interfered with or questioned in any suit in a Civil Court. In *Shimbu Narain Singh v. Bachcha* (3) that point was decided on the corresponding section of Act No. XVIII of 1873. It was there held by Turner, J., that a Civil Court had no power to review an order passed under cl. (n) of s. 95 of Act No. XVIII of 1873, and by Pearson, J., that a decision on an application under cl. (n) of s. 95 of Act No. XVIII of 1873 operated as *res judicata* and was not open to re-adjudication in a Civil suit. The Court of Revenue could not make its order under cl. (n) of s. 95 of Act No. XII of 1882, without deciding whether the tenancy alleged subsisted and whether there had been a wrongful dispossession.

Those would not be subsidiary issues, but they would be the valid issues to be determined by the Court of Revenue to whose exclusive jurisdiction, as the Court of first instance in all such cases, the determination of the dispute or matter was confined. The same observation applies to a claim of a person alleging himself to be a tenant for damages against a person alleged by the complainant to be his landlord for wrongful dispossession. That dispute or matter is confined to the exclusive jurisdiction of the Court of Revenue. Where a plaint in a Civil Court alleges facts which, if true, would show that the dispute or matter involved in the suit was one to which s. 93 or s. 95 of Act No. XII of 1881 applied, the plaint should be rejected under cl. (c) of s. 54 of the Code of Civil Procedure, or possibly in some cases returned under s. 57 of the same Code. In cases to which s. 93 or s. 95 of Act No. XII of 1881 applies, a denial by a defendant that the relationship

of landlord and tenant exists between the parties is immaterial, except in so far as it raises an issue for the Court of Revenue to determine. So far therefore as this was a suit against the first set of defendants who were alleged by the plaintiffs to be their landlords, the suit must be dismissed on the ground that the Civil Court had no jurisdiction to entertain it. Now as to the second set of defendants. There is nothing in s. 95, cl. (a) of Act No. XII of 1881 to limit the application for the recovery of the occupancy of land of which a tenant has been wrongfully dispossessed to an application against his landlord. Turning to s. 210 we find that where a tenant makes an application under cl. (a) of s. 95 of Act No. XII of 1881 against his landlord he may join in that application as a defendant any person in possession of the holding who claims title under his landlord, whether that person was or was not a party to the wrongful dispossession by the landlord of the tenant. It thus appears that in an application under cl. (a) a person may be made a defendant who was no party to the act of wrongful dispossession, but in that case such person can only be joined if he claims title through the landlord. Section 95 of Act No. XVIII of 1873 and s. 95 of Act No. XII of 1881 differ essentially in these respects from cl. (6) of s. 23 of Act No. X of 1859. Clause (6) of s. 23 of Act No. X of 1859 gave the Collector who was the Court of Revenue no jurisdiction to assess compensation for the wrongful dispossession, and it limited his jurisdiction to order a re-delivery of possession to cases in which the ryot, farmer or tenant had been illegally ejected by the person entitled to receive rent for the land or farm. In our opinion the policy of Act No. XII of 1881 is that all questions concerning the right of a tenant, as such, of an agricultural holding arising out of the relationship of tenant and landlord should, except so far as an appeal to a Civil Court is expressly allowed, be within the exclusive jurisdiction of the Courts of Revenue, whether the dispute was between the tenant and the landholder or between the tenant and any one claiming under the landholder. We are consequently of opinion that the subsidiary question of damages claimed in this suit against the second set of defendants, who are alleged by the plaintiffs to

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have been parties to the wrongful dispossession and to be claiming under the plaintiffs' landlords was one within s. 95 in respect of which an application under cl. (m) of that section might be made. On the other hand, where a tenant has been dispossessed by a person not claiming title through the tenant's landlord, the tenant's remedy for possession and damages is by suit in the Civil Court, as in such a case it might be necessary for the tenant to prove not only his own title from the landlord, but the landlord's title to let. For these reasons we are of opinion that the suit as against the second set of defendants, not only for possession but in respect of the damages, fails on the ground of want of jurisdiction of the Civil Court. The other relief claimed in this suit was a decree cancelling an order of a Settlement Officer and a decree ordering a lease granted by the first set of defendants to the second set to be invalid. A Civil Court has no jurisdiction to cancel an order of a Settlement Officer by decree in a civil suit. The validity or invalidity of the lease as against the plaintiffs would depend on the finding of the Court of Revenue as to whether a tenancy was subsisting between the plaintiffs and the first set of defendants. As the appeal was referred to the Full Bench on the question of jurisdiction, and as our decision on that question disposes of the respondents' suit, we allow the appeal, and dismiss the suit with costs in all Courts.

*Appeal decreed.*

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June 13.

## REVISIONAL CRIMINAL.

*Before Mr. Justice Aikman.*

QUEEN-EMPRESS v. MATABADAL.

*Criminal Procedure Code, s. 476—Order by Magistrate for prosecution under s. 195 of the Indian Penal Code—Preliminary inquiry.*

When a Magistrate takes action under s. 476 of the Code of Criminal Procedure, it is not necessary to the validity of his order that he should hold a preliminary inquiry. *Baperam Surma v. Gouri Nath Dutt* (1) followed.

The facts of this case sufficiently appear from the judgment of Aikman, J.

1) I. L. R. 20, Calo., 474.