

of appeal below these appellants challenged the mortgage-deed of the plaintiffs as a whole, alleging that it was collusive and had been executed without consideration, and that it was not enforceable as against the appellants' land. The appellants here did not pay Court fee sufficient to cover that ground of appeal with reference to the whole deed. If they had made out that first ground of appeal it would have gone to the root of the whole case of the plaintiff and might have deprived the plaintiff of a decree based on that deed, not only as against these appellants' land, but as against the property of the other defendants.

1890  
 BUCHAWAN  
 RAI  
 v.  
 MAKUND LAL.

The Court below declined to hear the appellants here, who were appellants there, in support of that ground of appeal, unless they paid up the Court fees on that ground of appeal, taking it as a challenge to the whole deed. In our opinion the Court below properly applied the Court Fees Act. Parties who come into Court, either as plaintiffs in a suit or as appellants in an appeal, must, if they wish to limit the Court fees to the actual remedy with which they are concerned, make a corresponding limit in their prayers for relief in the plaint or in their grounds of appeal. The result is that the appellants' appeal, so far as it relates to the 6 bighas odd, is dismissed with costs, and so far as it relates to the 15 bighas odd, it is decreed with costs in proportion, and the decree of the first Court is reinstated. The costs of the lower Court will be in proportion to the success and failure of the parties in this Court.

*Decree modified.*

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

SAKINA BIBI AND OTHERS (PLAINTIFFS) v. SWARATH RAI (DEFENDANT).\*

1892.  
 December 9.

*Civil and Revenue Courts, jurisdiction of—Act XII of 1881, s. 95—Suit involving the determination of status of tenant.*

A Civil Court has no jurisdiction to entertain a suit, the decision of which necessarily involves the determination of the class of tenancy of one or other of the parties to it. *Mahesh Rai v. Chandar Rai* (1) referred to.

\* Second Appeal No. 1022 of 1890, from a decree of H. F. D. Pennington, Esq., District Judge of Ghāzipur, dated the 11th July 1890, confirming a decree of Babu Lalta Prasad, Subordinate Judge of Ghāzipur, dated the 19th March 1890.

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

1893

SAKINA BIBI.  
 v.  
 SWARATH  
 RAI.

THE plaintiffs in this case were zamíndárs of the village of Tari in the Gházipur district. The defendants named in the plaint, namely, Swarath Rai and Musammat Kadma Kuar, the latter of whom appears to have died during the pendency of the suit, were respectively cousin and widow of one Ram Jiawan Rai, deceased, a cultivator of Tari. The plaintiffs sued for cancellation of a deed of gift of certain land in the village executed by Musammat Kadma Kuar, deceased, and for a declaration of their rights in respect of the said land, on the following grounds:—(1) that the land was an occupancy-holding, and the donee was not a partner in the cultivation, and (2) that Musammat Kadma Kuar was a childless widow and therefore incapable of alienating more than a life interest in the land. The defendant, Swarath Rai, in his written statement, pleaded, amongst other things, that the suit was not cognizable by a Civil Court, and denied specifically that the land in suit was an occupancy holding. He also pleaded that he was in any case a partner in the cultivation of the said land, and further that he was next in succession to Musammat Kadma Kuar, the deceased widow. The Court of first instance (the Subordinate Judge) found upon every issue in the case in favour of the defendant, and dismissed the plaintiffs' suit accordingly. The plaintiffs appealed to the District Judge, who, considering the finding that the position of the defendant's donor had been that of a tenant at fixed rates sufficient to dispose of the appeal, dismissed it. The plaintiffs then appealed to the High Court.

Mr. T. Conlon, and Mr. D. Banerji, for the appellants.

Mr. A. Strachey, and Mr. Abdul Raoof, for the respondent.

EDGE, C. J., and AIKMAN, J.—The ruling in *Mahesh Rai and others v. Chandar Rai and others* (1) applies. The Civil Court had no jurisdiction to entertain this suit, which could only be decided on the trial of the issue as to the status of a tenant, a matter excluded by s. 95 of Act No. XII of 1881, from the jurisdiction of Civil Courts. The appeal is dismissed with costs.

*Appeal dismissed.*

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