

1885

would, though findings of fact, be open to objection in second appeal.

NIVATH  
SINGH  
v.  
BHIKKI  
SINGH.

Applying these principles to the cases to which this reference relates, I am of opinion that if the grounds urged can be substantiated, they form a proper subject of second appeal, and my answer to the reference is therefore in the affirmative.

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April 16.

## APPELLATE CIVIL.

*Before Mr. Justice Oldfield and Mr. Justice Brodhurst.*

BINDA KUAR (DEFENDANT) v. BHONDA DAS (PLAINTIFF).\*

*Act IX of 1872 (Contract Act), ss. 69, 70—Payment of Government revenue by person wrongfully in possession of land.*

*B*, who was in wrongful possession of land which by right belonged to *K*, collected rents and paid the government revenue. *K* eventually established her title to the property, obtained possession, and recovered the rents from the tenants, and *B* was obliged to refund the same. Subsequently *B* sued *K* to recover the sum which he had paid on account of revenue.

*Held* that the claim did not fall within the provisions of ss. 69 and 70 of the Contract Act, and the fact that the plaintiff had been a loser by his wrongful act, or that the defendant had been benefited by the payment he made, would give him no right of action against her. *Tiluck Chand v. Soulamini Dasi* (1) referred to.

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

The *Senior Government Pleader* (*Lala Juala Prasad*), for the appellant.

*Pandit Ajudhia Nath* and *Munshi Kashi Prasad*, for the respondent.

OLDFIELD and BRODHURST, JJ.—The plaintiff took wrongful possession of the property of his deceased brother, which by right was the inheritance of the defendant, who ultimately established her title and obtained possession. While the plaintiff held possession he collected rents, and paid the Government revenue on the property. The defendant recovered the rents from the tenants, and the plaintiff was obliged to refund the same, and he now sues defendant to recover the sum he paid on account of revenue. The first

\* Second Appeal No. 438 of 1884, from a decree of M. S. Howell, Esq., District Judge of Mirzapur, dated the 17th January, 1884, reversing a decree of *Munshi Madho Lal*, *Munsif of Mirzapur*, dated the 6th July, 1883.

(1) I. L. R., 4 Calc. 566.

Court dismissed the suit. The lower appellate Court has decreed the claim, and the defendant has appealed. We are of opinion that the appeal must prevail, and the Court of first instance has rightly held that the plaintiff, under the circumstances, has no right of action. The claim does not fall within the provisions of ss. 69 and 70, Contract Act. The plaintiff was in wrongful possession of the defendant's property, and paid the revenue for his own benefit and on his own account, and the fact that he has been a loser by his wrongful act, or that the defendant has been benefited by the payment he made, will give him no right of suit against her. The case of *Tiluck Chand v. Soudamini Dási* (1) is very similar, and supports the view we take. We decree the appeal, and set aside the decree of the lower appellate Court, and restore that of the first Court, and dismiss the suit with all costs.

*Appeal allowed.*

## FULL BENCH.

1885

BINDA  
KUAR  
v.  
BHONDA  
DAS.

1885  
April 18.

*Before Sir W. Comer Petheram, Kt., Chief Justice, Mr. Justice Straight,*

*Mr. Justice Oldfield, Mr. Justice Brodhurst, and Mr. Justice Mahmood.*

CHATTARPAL SINGH (PETITIONER) v. RAJA RAM (OPPOSITE PARTY)\*.

*Suit in formâ pauperis—Rejection of application—Civil Procedure Code,*

\* s. 407 (c)—“Right to sue”—Limitation.

Where an application for leave to sue as a pauper was rejected with reference to s. 407 (c) of the Civil Procedure Code on the ground that the claim was barred by limitation and therefore the applicant had no right to sue,—held by the Full Bench that the Court had acted within its powers, and that, its jurisdiction not having been exercised illegally or with material irregularity, the High Court had no power of interference in revision under s. 622 of the Civil Procedure Code. *Amir Hassan Khan v. Sheo Baksh Singh* (2) referred to.

The terms of s. 407 (c) of the Code must not be read as limiting the Court's discretion to merely ascertaining whether the “right to sue” arose within its jurisdiction, but have a more extended meaning, namely, that an applicant must make out that he has a good subsisting cause of action, capable of enforcement in Court, and calling for an answer, and not barred by the law of limitation or any other law.

*Per MAHMOOD, J.*—The word “case” as used in s. 622 of the Civil Procedure Code should be understood in its broadest and most ordinary sense, including all adjudications which might constitute the subject of appeal or revision, subject to the rules governing the exercise of the appellate and revisional jurisdictions respectively; and

\* Application No. 270 of 1884, for revision under s. 622 of the Civil Procedure Code of an order of Babu Abinash Chander Banerji, Subordinate Judge of Allahabad, dated the 3rd May, 1884.

(1) I. L. R., 4 Calc., 566.

(2) I. L. R., 11 Calc., 6.