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JAMAITUN-NISSA v. LUIFUNNISSA.

Apart from this, however, I confess that I am unaware of any rule that if more than one remedy is provided by statute for any grievance or injury, either of such remedies, in the absence of express provisions to that effect, is a bar to the other. Even conceding that the defendant in this case ought to have sought her remedy under s. 206 or under s. 623, I cannot hold that her neglect to do so makes her incapable of obtaining the same result by the exercise of her right of appeal.

For these reasons, my answer to the two questions referred to the Full Bench is in the affirmative.

APPELLATE CIVIL.

1885 *March* 6.

Before Mr. Justice Straight and Mr. Justice Brodhurst.

MÚLCHAND (DEFENDANT) *v.* BHIKARI DAS (PLAINTIFF)*

Act XII of 1881 *(N.-W. P. Rent Act), s.* 140—*Case struck off with liberty to plaintiff to bring a fresh suit—Omission to sue for part of claim in case struck off—Fresh suit for omitted claim not barred—Civil Procedure Code, s.* 43—*Act XII of* 1881, *s.* 93 *(h)—Village expenses—Expenses of cultivating sir-land held in partnership by plaintiff and defendant.*

A recorded co-sharer of a mahal sued the lamberdar for his share of the profits of the mahal for the year 1286 fasli. At the time of the institution of the suit, the profits for 1287 and 1288 fasli also were due, but no claim was then made in respect of them. The suit was struck off on account of the non-appearance of the parties, under s. 140 of Act XII of 1881 (N.-W. P. Rent Act), with leave to the plaintiff to bring a fresh suit. Subsequently the plaintiff brought a suit against the same defendant for his share of the profits of the mahal for 1287 and 1288 fasli.

Held that the suit was not barred by the provisions of s. 43 of the Civil Procedure Code.

Held also that the Courts below had properly refused to deduct from the plaintiff's claim as "village expenses" within the meaning of s. 93 (*h*) of the Rent Act, certain charges on account of the expenses of cultivation of *sir*-land held in partnership by the plaintiff and the defendant.

THE plaintiff in this suit, a recorded co-sharer of a mahal, sued the defendant, the lambardar, for his share of the profits of the mahal for the fasli years 1287 and 1288. It appeared that in January, 1882, the plaintiff had brought a suit against the defend-

* Second Appeal No. 514 of 1884, from a decree of T. B Tracy, Esq., Offg. District Judge of Bareilly, dated the 31st January, 1884, affirming a decree of H. Blunt, Esq., Deputy Collector of Bareilly, dated the 14th September, 1883.

ant for his share of profits for 1286 fasli, and that, at the time when that suit was instituted, the profits now claimed were due. There was in that suit no adjudication between the parties, but the case was struck off under s. 140 of Act XII of 1881 (N.-W. P. Rent Act), with leave to the plaintiff to bring a fresh suit. It was contended in this suit on behalf of the defendant that the suit was barred by the provisions of s. 43 of the Civil Procedure Code. It was urged that the plaintiff, having omitted to sue for the profits for 1287 and 1288 fasli when he filed his plaint on account of the profits for 1286 fasli, was now barred from suing in respect of 1287 and 1288 fasli.

The Court of first instance decreed the claim, holding that the provisions of s. 43 of the Civil Procedure Code did not apply to a case in which there had been no adjudication, and in which leave had specially been granted to the plaintiff to bring a fresh suit. On appeal, the defendant contended that the Court of first instance had erred in not applying the provisions of s. 43 of the Civil Procedure Code to the case. He further contended that the Court of first instance ought not to have refused to deduct from the plaintiff's claim certain charges described as "*sir* expenses," *i. e.*, the expenses of cultivation of *sir*-land held in partnership by the plaintiff and the defendant.

Upon the first point, the lower appellate Court observed :— "Had the claim in respect of 1286 fasli been decreed or dismissed by the Court after hearing the parties and their witnesses, the present suit would unquestionably have been barred by the operation of s. 43. But, the suit having been struck off on account of the non-appearance of the parties, it seems only reasonable that the plaintiff-respondent should be considered to be in the same position as if he had never filed the suit." In regard to the claim of the defendant to "*sir* expenses," the Court observed :— "This does not appear, properly speaking, to be an item of the village-expenses contemplated by s. 93 (4) of the Rent Act." In second appeal, the defendant contended again (i) that the claim was barred by the provisions of s. 43 of the Civil Procedure Code, (ii) that the Courts below had erred in disallowing the cost of cultivating the *sir* land, and (iii) that the lower appellate Court had not disposed of all the pleas in appeal before it.

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MULCHAND v. BHIKARI DAS.

Munshi *Kashi Prasad*, for the appellant.

Mr. *A. S. T. Reid*, for the repondent.

STRAIGHT, J.—I think the Courts below have rightly held that the suit is not barred by the provisions of s. 43 of Act XIV of 1882. It appears that the plaintiff formerly sued the defendant for his share of the profits of 1286 fasli. At the time of the institution of that suit the profits now claimed were due. This suit was struck off on account of the non-appearance of the parties, under s. 140 of Act XII of 1881, and leave was specially reserved for the plaintiff to bring a fresh suit. I do not see anything in the law to prevent the plaintiff from bringing the present suit. At any rate, before the case was struck off he could have so amended his plaint as to have included the present claim. If he could do so, *à fortiori* I do not see any reason why he should not do the same in a fresh suit. As it is, the claim for 1286 fasli is barred by limitation, and the plaintiff can now proceed with his claim in respect of 1287 and 1288 fasli.

I also concur with the Judge in that portion of his judgment in which he disposes of the plea about *sir* expenses. As to the third plea, the judgment of the Judge fully disposes of all the pleas. The appeal is dismissed with costs.

BRODHURST, J.—I concur.

Appeal dismissed.

1885
March 7.

FULL BENCH.

Before Sir W. Comer Petheram, Kt., Chief Justice, Mr. Justice Straight, Mr. Justice Oldfield, Mr. Justice Brodhurst, and Mr. Justice Mahmood.

NIAMAT ALI (PLAINTIFF) *v.* ASMAT BIBI AND ANOTHER (DEFENDANTS)*.

Pre-emption—Wajib-ul-arz—"Rights and interests"—"Qimat"—"Sale"—Exchange.

The *wajib-ul-arz* of a village gave a right of pre-emption by a clause providing that in case of transfer by any co-sharer of his rights and interests (*haqiyat*), his partners should have a right to purchase at the same price (*qimat*) as the vendee had given. One of the co-sharers transferred to a stranger one biswa and six dhurs of a grove or garden in exchange for another piece of land.

Held by the Full Bench that this transaction was a transfer of *haqiyat* within the terms of the *wajib-ul-arz*.

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* Second Appeal No. 1655 of 1883, from a decree of Babu Ram Kali Chaudhri Subordinate Judge of Allahabad, dated the 31st August, 1883, reversing a decree of Pandit Indar Narain, Munsif of Allahabad, dated the 2nd February, 1883.