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“Should this appeal proceed under Ch. 42, or under Ch. 46, s. 622?”

MAGNI RAM
v.
JIWA LAL.

Pandit *Ajudhia Nath*, for the appellants.

The following opinion was delivered by the Full Bench:—

PETHERAM, C.J., and OLDFIELD, BRODTHURST, MAHMOOD, and DUTHOIT, JJ.—This appeal cannot proceed under s. 622 of the Civil Procedure Code, because the Privy Council has decided in *Amir Hassan Khan v. Sheo Bakhsh Singh* (1) that only questions relating to the jurisdiction of the Court can be entertained under that section. The appeal will be laid before a Division Bench for orders under s. 551.

APPELLATE CIVIL.

Before Sir W. Comer Petheram, Kt., Chief Justice, and Mr. Justice Brodthurst.

KAULESHWAR PANDAY (PLAINTIFF) v. GIRDIARI SINGH AND ANOTHER
(DEFENDANTS).*

Jurisdiction—Civil and Revenue Courts—Declaration that land is plaintiff's sir and defendant a lessee—Landholder and tenant.

A zamindar claimed a declaration that certain land was his *sir*, and that the defendants were in possession thereof as his lessees. The defendants resisted the claim on the ground that they were tenants of the land at fixed rates, and not lessees of it as the plaintiff's *sir*.

Held that the suit raised the question whether the land was *sir*, in respect of which no occupancy-rights could be created except by contract, and whether the defendants were the plaintiff's lessees, and that this was a question purely of contract, and one which was cognizable in the Civil Courts.

THE plaintiff in this suit, a zamindar, claimed a declaration that certain land was his *sir*, “that the defendants were in possession thereof as cultivators under a lease granted by the plaintiff, and that they should continue in possession of the land by payment of the rent entered in the lease.” The defence to the suit was that the defendants were tenants at fixed rates of the land, and not lessees of it, as the plaintiff's *sir*, and that as the relation of landlord and tenant admittedly existed between the parties, and the object of the suit was the determination of the nature of the tenancy, the suit was exclusively cognizable in the Revenue Courts.

* First Appeal No. 52 of 1884, from a decree of W. Barry, Esq., District Judge of Jaunpur, dated the 11th January, 1884.

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The judgment of the lower Court (District Judge of Jaunpur) was in these terms :—

“The issue is, whether the suit is cognizable by the Civil Court? I find that the two defendants, Banslochan Singh and Girdhari Singh, are own brothers. The plaintiff asserts that this land is his *sir*, and that he has let it to Banslochan under a lease, and taken a *kabuliyat* from him. Banslochan Singh is in prison, and he does not defend the suit. But his brother, Girdhari Singh, replies that the holding is hereditary, and not the *sir* of plaintiff; that he knows nothing of the alleged lease; and that the suit is not cognizable by the Civil Court.

“The plaintiff admits that both the defendants are in possession; the relation of landlord and tenant is thus established; so the dispute resolves itself into a dispute about the nature of the defendants' holding; plaintiff asserts the land is his *sir*, and that defendants hold under a lease, and, of the defendants, Girdhari ignores the lease, and asserts that his family has held the land for generations. It is thus clearly a case for a Revenue Court. The suit is dismissed with costs.”

The plaintiff appealed to the High Court, contending that the suit had been properly instituted in the Civil Court.

Munshi *Hanuman Prasad*, for the appellant.

Babu *Jogindro Nath Chaudhri*, for the respondents.

The Court (PETHERAM, C.J., and BRODHURST, J.) delivered the following judgment :—

PETHERAM, C.J.—We think that the appeal must be allowed. The suit raises the question whether the land to which the suit relates is *sir*-land. This is land in respect of which no occupancy rights can be created except by contract. The plaintiff contends that he granted a lease of the land to the defendants. The question is, whether the land is *sir*-land, and the defendants are the plaintiff's lessees. The question whether the defendants are the plaintiff's lessees is a question purely of contract, and is one which is cognizable in the Civil Courts.

Appeal allowed.

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KAULESHAR
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