

MAHMOOD, J.—I am of the same opinion as the learned Chief Justice. The dispute between the parties to this case constitutes a suit of a civil nature within the meaning of s. 11 of the Civil Procedure Code, and would therefore be the subject of adjudication by the Civil Courts, unless it is shown that its cognizance is barred by any legislative enactment. The learned pleader for the respondents endeavoured to show that the matter of the dispute fell under the purview of cl. (g) of s. 241 of the Revenue Act, and that as the Settlement Officer must be taken to have acted under s. 56 of that Act, his order was within jurisdiction, and formed an adjudication which would bar the present suit under s. 13 of the Civil Procedure Code. The learned pleader also referred to ss. 62 and 64 of the Revenue Act, but none of these sections can either be understood to bar the jurisdiction of the Civil Courts in respect of disputes of this nature, or to confer power on Settlement Officers to adjudicate upon rights such as are in issue in this litigation. To substantiate the plea of *res judicata* it is essential to show that the former adjudication was by a Court of competent jurisdiction; but the Settlement Officer cannot be regarded as such a Court, and there was no adjudication.

For these reasons I am unable to agree in the rule laid down in *Rup Singh v. Sukhdeo* (1) on which both the lower Courts have relied, and my answer to the question referred to us is in the negative.

OLDFIELD, BRODHURST, and DUTHOIT, JJ., concurred.

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

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December 13.

RAMJIWAN MAL AND ANOTHER (PLAINTIFFS) v. CHAND MAL AND OTHERS
(DEFENDANTS).*

Suit for dissolution of partnership—Winding-up—Jurisdiction—Act IX of 1872 (Contract Act), s. 265—Civil Procedure Code, ss. 11, 213, 215, sch. IV, Form 113.

The ordinary Civil Courts have jurisdiction to try a suit for dissolution of a partnership, their jurisdiction to try such suits not being ousted by s. 265 of the Contract Act, 1872.

* Application No. 334 of 1884, for revision under s. 622 of the Civil Procedure Code of an order of H. D. Willock, Esq., District Judge of Azamgarh, dated the 21st September, 1883.

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THIS was a reference to the Full Bench by Brodhurst and Duttoit, JJ. It arose out of the following facts. A suit for dissolution of a partnership, the relief sought in the plaint being stated in the terms of the 4th paragraph of Form No. 113, 4th sch., Civil Procedure Code, was instituted in the Court of the Subordinate Judge of Azamgarh. The defendants set up as a defence to the suit, amongst other things, that the suit was not cognizable in the Subordinate Judge's Court, but should, under s. 265 of Act IX of 1872 (Contract Act), have been instituted in the District Court, inasmuch as the partnership had been dissolved before the institution of the suit, by mutual consent, and all that remained was to adjust the partnership accounts. The Subordinate Judge allowed this contention, relying on *Prosad Doss Mullick v. Russick Lall Mullick* (1) and *Ramayya v. Chandra Sekara Rau* (2), and made an order directing that the plaint should be returned to the plaintiffs for presentation to the proper Court. On appeal by the plaintiffs the District Judge affirmed the order of the Subordinate Judge, holding that, as a dissolution of the partnership had taken place, "the claim should be brought in the form of an application under s. 265 of the Contract Act, and could be entertained by a District Judge alone."

The plaintiffs applied to the High Court for revision under s. 622 of the Civil Procedure Code, on the ground that the Subordinate Judge was competent to entertain the suit, and had improperly refused to do so. The case came before Brodhurst and Duttoit, JJ. The learned Judges, after consideration of the following authorities—*Ramayya v. Chandra Sekara Rau* (2); *Prosad Doss Mullick v. Russick Lall Mullick* (1); *Ram Chunder Shaha v. Manik Chunder Banikya* (3); *Harrison v. The Delhi and London Bank* (4); *Kalian Das v. Ganga Sahai* (5); *Luchman Lall v. Ram Lall* (6)—referred the following question to the Full Bench:—"Is the jurisdiction provided by s. 265 of the Indian Contract Act, 1872, concurrent with, or does it oust, the jurisdiction of the ordinary Civil Courts, as described in Act VI of 1871 and in the Code of Civil Procedure?"

(1) I. L. R., 7 Calc., 157.

(4) I. L. R., 4 All., 437.

(2) I. L. R., 5 Mad., 256.

(5) I. L. R., 5 All., 500.

(3) I. L. R., 7 Calc., 428.

(6) I. L. R., 6 Calc., 521.

Mr. *T. Conlan* (with him *Babu Jogindro Nath Chaudhri*.)—S. 265 of the Contract Act is an enabling section only. Moreover, it refers to the case of partners between whom there is no sort of contention, and who only desire the aid of the Court in bringing the partnership business to a conclusion. The suit is one for dissolution of partnership; such a suit is cognizable in the ordinary Civil Courts. This is shown by the terms of s. 215 of the Civil Procedure Code, and of Form No. 113 in the 4th sch. to the Code.

Mr. *G. T. Spinkie* (with him *Mr. C. H. Hill*, *Mr. W. M. Colvin*, and *Babu Ratan Chand*).—The partnership has been dissolved. The only relief which the plaintiffs can be granted is the winding-up of the partnership business. Their claim must be treated as one for winding-up. The winding-up of a partnership is a matter exclusively cognizable by the District Court. In support of this contention I rely on *Prosad Doss Mullick v. Russick Lal Mullick* (1) and *Ramayya v. Chandra Sekura Rau* (2).

[The Court, having regard to the terms of the plaint, amended the question referred in the manner following:—“Whether the ordinary Civil Courts have jurisdiction to hear and determine this cause, or whether such jurisdiction is ousted by s. 265 of the Indian Contract Act?”]

The following judgments were delivered by the Full Bench:—

PETHERAM, C. J.—This suit is for dissolution of a partnership. This is in effect asking the Court to give effect to the partnership agreement. This is a relief which can be sought in the ordinary Civil Courts. S. 265 of the Contract Act is intended to meet a different state of things. The winding-up of a partnership is the taking by the Court into its own hands the settlement of the partnership concerns. It is a jurisdiction which is created by statute. If this was an application under s. 265 of the Contract Act, I am inclined to think that the District Court only could entertain it.

OLDFIELD and BRODHURST, JJ., were of opinion that the suit, being one for dissolution of partnership, was cognizable in the ordinary Civil Courts.

MAHMOOD, J.—Judging by the allegations in the plaint and the nature of the reliefs prayed for, I am of opinion that this suit

(1) I. L. R., 4 Calc., 157.

(2) I. L. R., 5 Mad., 256.

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is cognizable in the ordinary Civil Courts. It is a suit of a civil nature, within the meaning of s. 11 of the Civil Procedure Code, which provides the general jurisdiction of the Civil Courts subject to the provisions therein contained. There is no provision in the Code to bar the cognizance of such a suit; but, on the contrary, s. 215 contemplates such a suit. Nor am I aware of any enactment which bars the cognizance of such suits by the ordinary Civil Courts. Considering the terms of s. 215 with s. 213, and as well the language of No. 113, sch. iv, taken with s. 644 of the Code, it may be that in such a suit as this the Court will be called upon to take cognizance of matters which might have formed the subject of an application under s. 265 of the Contract Act. But we need not go beyond the general character of the suit to see if it is cognizable by the ordinary Courts; but I wish to guard myself against being understood to lay down the rule that, even if the suit was one involving matters of the character mentioned in s. 265 of the Contract Act, the ordinary Civil Courts would be precluded from entertaining it.

DUTHOIT, J.—I am of opinion that a suit for dissolution of partnership is cognizable in the ordinary Civil Courts.

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December 13.

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

NIDHI LAL (DEFENDANT) v. MAZHAR HUSAIN AND ANOTHER (PLAINTIFFS)*

Jurisdiction—Competency of Subordinate Judge to try Munsif's case—Act XVI of 1868, ss. 13, 15, 16—Act VI of 1871 (Bengal Civil Courts Act), ss. 19, 20—Civil Procedure Code, ss. 15, 25, 57 (a), 578.

Per PETHERAM, C.J., and BRODHURST, MAHMOOD, and DUTHOIT, JJ. The object of ss. 19 and 20 of the Bengal Civil Courts Act, 1871, was to create in the District Judge, Subordinate Judge, and Munsif concurrent jurisdiction up to Rs. 1,000.

Per PETHERAM, C.J.—S. 15 of the Civil Procedure Code is a proviso to those sections. The word "shall" in that section is imperative on the suitor. The word is used for the purpose of protecting the Courts. The suitor shall be obliged to bring his suit in the Court of the lowest grade competent to try it. The object of the Legislature is that the Court of the higher grade shall not be overcrowded with suits. Whenever an Act confers a benefit, the donee may

* Second Appeal No. 1176 of 1883, from a decree of F. E. Elliot, Esq., District Judge of Mainpuri, dated the 17th May, 1883, affirming a decree of Mirza Abid Ali Beg, Subordinate Judge of Mainpuri, dated the 29th January, 1883.