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but in the *wajib-ul-arz* now in question no such expression occurs, and therefore the answer which the learned Chief Justice has given fully applies to the case.

DUTHOIT, J.—I have no hesitation in answering the question in the affirmative.

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November 29.

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

SHEODISHIT NARAIN SINGH AND ANOTHER (DEFENDANTS) v. RAMESHAR DIAL AND ANOTHER (PLAINTIFFS). \*

*Jurisdiction—Civil and Revenue Courts—Landholder and tenant—Declaratory decree—Act XII of 1881 (N.-W. P. Rent Act), s. 95 (n).*

A suit in which the plaintiff claims, as the tenant of land, that he may be declared to be the tenant, and that the defendant, the landholder, may be restrained from interfering with his right to the land as a tenant, and in which the defendant denies the relation between him and the plaintiff of landholder and tenant, is not a suit which is exclusively cognizable in the Revenue Court.

THE plaintiffs in this case alleged that they held 107 bighas 16 biswas of cultivatory land at a rent of Rs. 147-8-0, and 1 bigha of grove-land at a rent of 12 annas, and 1 bigha 5 biswas of rent-free land, as their ancestral property; that they used plot No. 254, consisting of 11 biswas, which was a portion of their rent-paying land, and plot No. 253, consisting of 1 bigha 5 biswas rent-free land, as a threshing floor and for stacking corn; that the defendants, who were the zamindars, denied their right to the two plots mentioned, and interfered with their possession by various acts stated in the plaint; and they asked for a decree declaring their right to the land, and that the grain which the defendants had stored on the land might be removed, and the defendants might be restrained from interfering with their right to the land. The defendants' answer to the suit was that the plots did not belong to the plaintiffs, either as part of their rent-paying holding or rent-free holding, but were waste land belonging to them and in their possession.

The Court of first instance dismissed the suit. The lower appellate Court gave the plaintiffs a decree as claimed.

\* Second Appeal No. 21 of 1884, from a decree of H. S. Gardner, Esq., District Judge of Benares, dated the 23rd August, 1883, reversing a decree of Shah Ahmad-ullah, Munsif of Benares, dated the 5th June, 1883.

On second appeal the defendants contended that the suit was not maintainable in the Civil Courts in respect of plot No. 254, claimed by the plaintiffs as part of their rent-paying holding, as the dispute or matter was one on which an application might be made under s. 95 (n) of Act XII of 1851, the N.-W. P. Rent Act, to the Revenue Court.

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For the respondents it was contended that s 95 (n) refers to cases where the relation of landlord and tenant has been recognized by the parties suing, and in which a landlord has dispossessed an acknowledged tenant otherwise than according to the provisions of the Rent Law, and that section did not apply to the present claim in which the dispute was as to the rights of the parties in the land.

The Divisional Bench (OLDFIELD and BRODHURST, JJ.) hearing the appeal referred to the Full Bench the question whether the claim in respect of plot No. 254 was exclusively cognizable by the Revenue Court.

The following cases were noted, in the order of reference, as cases to which reference might be made :—

*Sheodan Singh v. Seetul Singh* (1); *Shimbhu Narain Singh v. Buchcha* (2); *Kalian Das v. Tika Ram* (3); *Kanahia v. Ram Kishen* (4); *Sawai Ram v. Gir Prasad Singh* (5); *Muhammad Abu Jafar v. Wali Muhammad* (6); *Sukhdask Misr v. Karim Chaudhri* (7); *Birbal v. Tika Ram* (8); *Lala Mal v. Salar Bakhs* (9); *Ram Prasad v. Ram Shankar* (10); *Muhammad Zaki v. Husrat Khan* (11); *Lalu v. Sadiya* (12); S. A. No. 456, decided the 2nd August, 1883 (13); S. A. No. 1014, decided the 20th May, 1884 (14); S. A. No. 1503, decided the 20th May, 1884 (15).

Lala Lalta Prasad and Munshi Hanuman Prasad, for the appellants.

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

(1) N.-W. P. S. D. A. Rep.,  
1865, p. 282

(2) I. L. R., 2 All., 200.

(3) I. L. R., 2 All., 137.

(4) I. L. R., 2 All., 429.

(5) I. L. R., 2 All., 707.

(6) I. L. R., 3 All., 81.

(7) I. L. R., 3 All., 521.

(8) I. L. R., 4 All., 11.

(9) Weekly Notes, 1881, p. 105.

(10) Weekly Notes, 1882, p. 58.

(11) Weekly Notes, 1882, p. 61.

(12) Weekly Notes, 1882, p. 62.

(13) Not reported.

(14) Not reported.

(15) Not reported.

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For the appellants it was contended that the suit was not cognizable in the Civil Courts. The plaintiffs seek to have a right of tenancy declared. This is a relief which the Revenue Courts are competent to give them. The question whether a man is a tenant or not is one for the Revenue Courts to determine. If the plaintiffs were suing for possession, their suit would be exclusively cognizable in the Revenue Courts. Therefore they should go to those Courts for the relief they now seek.

The following judgments were delivered by the Full Bench :—

PETHERAM, C. J.—In my opinion the suit as brought is cognizable in the Civil Courts, the jurisdiction of those Courts not being barred by s. 95 of the Rent Act. In order to oust the jurisdiction of the ordinary Courts of the country, the words of the enactment excluding their jurisdiction must be clear. The question is whether s. 95 says that this particular suit shall not be brought. The plaintiff might have applied to the Revenue Court for possession of the land on the ground of having been wrongfully dispossessed ; and I am inclined to think that, if he had sought for possession of the land in this suit, his claim would have been exclusively cognizable in the Revenue Court. But when a man's land is interfered with, he may bring an action of trespass. The plaintiff brings this suit to restrain trespass on his land, and I think that the suit is not one which is made by s. 95 exclusively cognizable in the Revenue Court.

OLDFIELD, J.—The suit as brought is one for the Civil Courts to try. The question whether, if the plaintiffs had claimed possession, the suit would have been cognizable in the Civil Courts, does not arise. I am inclined to think that, even had he made such a claim, the suit would have been cognizable in the Civil Courts. The policy of the Rent Act is to exclude the jurisdiction of the Civil Courts in cases relating to disputes arising out of the relationship of landlord and tenant. Where the person sued disputes that relation, the Revenue Court would not have exclusive jurisdiction. In such a case the tenant could not, by making an application under s. 95 (n) of the Rent Act, obtain entire relief. That clause refers to the case of a landlord who has ejected an acknowledged tenant otherwise than under the provisions of the Rent Act.

BRODHURST, J.—I agree.

MAHMOOD, J.—I have no doubt that the suit as brought is cognizable in the Civil Courts. I need not consider the question whether, if the plaintiffs claimed possession, the suit would be cognizable in those Courts.

DUTHOTT, J.—The suit as brought is, in my opinion, cognizable in the Civil Courts.

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## APPELLATE CIVIL.

1884  
December 3.

Before Mr. Justice Brodhurst and Mr. Justice Mahmood.

TIKA RAM AND OTHERS (DEFENDANTS) v. KHUDA YAR KHAN (PLAINTIFF).\*

*Jurisdiction—Civil and Revenue Courts—Resumption of rent-free grant—Act XII of 1881 (N.-W. P. Rent Act), ss. 30, 95 (c)—Act XIX of 1873 (N.-W. P. Land Revenue Act), s. 241 (h).*

A zamindar brought a suit to recover possession of certain land in the village which was held by the defendants rent-free, in consideration of rendering services as *khera-patis*, on the ground that he was entitled, as zamindar, to dispense with their services, and that therefore they no longer possessed any right to hold the land. The claim was resisted by the *khera-patis* on the ground that for many years they had been in possession of the land as muafi-holders.

*Held* that the dispute so raised was a matter which could form the subject of an application to resume a rent-free grant within the meaning of s. 30 of the N.-W. P. Rent Act (XII of 1881), and that the cognizance of the suit by the Civil Court was therefore barred by cl. (c) of s. 95 of that Act, and that, for similar reasons, the Civil Court, under cl. (h) of s. 241 of the N.-W. P. Land Revenue Act (XIX of 1873) could not exercise jurisdiction over the matter of the suit.

THIS suit was instituted in the Civil Court. The plaintiff was the proprietor of a *patti* of a mahál in which the defendants held certain land. He sued the defendants for possession of this land. He alleged that “the defendants had been appointed ‘*kherá-patis*’† by the former proprietors of the village; that in consideration of their services as such, the produce of the land was remitted to them, and they were entitled to hold the land simply to enjoy the produce thereof so long as they held the said office, the tenure of which depended on the will of the zamíndár; that they had wrongfully

\* Second Appeal No. 44 of 1884, from a decree of Maulvi Muhammad Abdul Qaiyum Khan, Subordinate Judge of Bareilly, dated the 21st November, 1883, reversing a decree of Maulvi Muhammad Aziz-ud-din, Munsif of Pilibhit, dated the 26th May, 1883.

† *Kherá-pati*—A Brahman entitled to perform certain religious ceremonies, and to receive the fees appertaining thereto.—FALLON.