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THE SECRETARY OF STATE  
v  
RAM UGRAH  
SINGH.

nature, is whether the cognizance of the suit was barred by any Act or Regulation in force when the suit was brought."

I would affirm the Subordinate Judge's decree, declaring that the land in dispute was included in the area of the plaintiffs' villages, for which a permanent settlement was made, and is not liable to further assessment for revenue; and I would dismiss the appeal with costs.

MAHMOOD, J., concurred.

*Appeal dismissed.*

1884.  
November 13.

*Before Mr. Justice Oldfield and Mr. Justice Mahmood.*

GANGA RAM (PLAINTIFF) v. BENI RAM AND OTHERS (DEFENDANTS).\*

*Jurisdiction of Civil Court—Landholder and tenant—Suit for recovery of land of which tenant has been dispossessed—Relation of landlord and tenant admitted—Act XII of 1881 (N.-W. P. Rent Act), s. 95(a).*

A landholder served a notice of ejection on G, under the provisions of s. 36 of the Rent Act (N.-W. P.), as a tenant-at-will. Under the provisions of s. 39 of the Act G contested his liability to be ejected, on the ground that he was not a tenant-at-will, but one holding by virtue of an agreement executed in his favour by the landholder. The question of G's liability to be ejected was decided adversely to him, and he was ejected under s. 40 of the Act. He subsequently sued the landholder in the Civil Court for possession of the land, by virtue of the agreement, alleging that his ejection was a breach of such agreement. The landholder's defence to this suit was that G had been rightfully ejected. *Held* that, inasmuch as the relation of landlord and tenant between the parties at the time of the proceedings under the Rent Act was admitted, and the dispute in the suit could appropriately form the subject of an application under cl. (a) of s. 95 of that Act, the suit was not cognizable in the Civil Courts.

*Muhammad Abu Jafar v. Wali Muhammad* (1); *Sukhdaiik Mir v. Karim Chaudhri* (2); *Kanahia v. Ram Kishen* (3); distinguished. *Shimbu Narain Singh v. Bachcha* (4) referred to.

THE suit in which this second appeal arose was instituted in the Court of the Munsif of Agra. It appeared that in February, 1882, the defendants, who were the zamindars of the village in which the plaintiff cultivated certain land, caused a notice of ejection to be served on the latter under the provisions of s. 36 of Act

\* Second Appeal No. 1744 of 1883, from a decree of Babu Promoda Charan Banerji, Subordinate Judge of Agra, dated the 11th September, 1883, affirming a decree of Maulvi Muhammad Fida Husain, Munsif of Agra, dated the 28th February, 1883.

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

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

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

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

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XII of 1881 (N.-W. P. Rent Act). They alleged that the plaintiff was the tenant-at-will of the land. The plaintiff, under the provisions of s. 39 of that Act, contested his liability to ejection, on the ground that by an agreement in writing between him and the defendants, called a "*patta*" (lease), dated the 13th November, 1881, and attested before the kanungo, his rent had been enhanced, and it had been agreed that, so long as he paid the enhanced rent, he should not be ejected. The Assistant Collector who heard the case decided that the plaintiff was liable to ejection, and on the 5th June, 1882, the plaintiff was ejected under the provisions of the Rent Act. In the present suit the plaintiff claimed to recover possession of the land, by virtue of the agreement, dated the 13th November, 1881. The defendants defended the suit upon the grounds, among others, that it was not cognizable in the Civil Courts, and that the instrument of the 13th November, 1881, was not admissible in evidence, not having been registered under the Registration Act, 1877. The Court of first instance framed issues on these points, and disposed of the suit with reference to its decision on the second point. It held on this point that the instrument of the 13th November, 1881, was a lease, and therefore an instrument which was compulsorily registrable, and not being registered was not admissible in evidence. It therefore dismissed the suit. On appeal the plaintiff contended that the instrument of the 13th November, 1881, was not a lease, but merely an agreement of the kind mentioned in ss. 12 and 21 of the Rent Act, and therefore not compulsorily registrable. The lower appellate Court (Subordinate Judge) held, on the question of jurisdiction, that the suit was cognizable in the Civil Courts. It observed as follows:—"I am of opinion that the suit is cognizable in the Civil Courts. The Revenue Court has jurisdiction when the relationship of landlord and tenant is admitted to exist between the parties. In this case the defendants deny that the plaintiff is a tenant. He has been ejected by the Revenue Court, and it has been declared that he has no right to retain possession of the land in suit. He is therefore competent to sue in the Civil Courts for a declaration that he is still the tenant of the defendants, and that he has the right to occupy his holding in perpetuity so long as he pays his rent. The Civil Court alone can make such a declaration. Of course, if it

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be found that the plaintiff is the tenant of the defendants and is entitled to remain in possession of his holding, it will abstain from giving a decree for possession, with reference to the provisions of s. 95 of the Rent Act, leaving the plaintiff to seek his remedy under clause (n) of that section. This view is supported by *Muhammad Abu Jafar v. Wali Muhammad* (1) and *Sukhdai Misr v. Karim Chaudhri* (2), and *Ram Prasul v. Ram Shankar* (3). The decision of the Revenue Court between these parties cannot moreover operate as *res judicata*." On the question whether the instrument of the 13th November, 1881, was compulsorily registrable, the lower appellate Court agreed with the Court of first instance in holding that the instrument was a lease; and as such compulsorily registrable under the Registration Act, 1877, and that it was not receivable in evidence, not being registered.

In second appeal the plaintiff contended, *inter alia*, that the instrument on which his suit was based was not a lease, and consequently was not compulsorily registrable under the Registration Act.

Mr. J. D. Gordon, for the appellant.

The Junior Government Pleader (Babu Dwarka Nath Banerji) and Pandit Bishambhar Nath, for the respondents.

The Court (MAHMOOD and OLDFIELD, JJ.) delivered the following judgment:—

MAHMOOD, J.—We consider it unnecessary to enter into the various points raised by the argument of the learned counsel for the appellant, because we are of opinion that the suit was not cognizable by the Civil Court. That the relation between the parties was that of landlord and tenant is admitted on all hands, and the plaintiff's case, even if fully admitted, amounts to a contention that by reason of the *patta* of 13th November, 1881, his tenancy-at-will was converted into a perpetual tenancy at the fixed annual rent of Rs. 79, and that, in breach of the conditions of the *patta*, the defendants ejected him on the 5th June, 1882. On the other hand, the defendants, whilst denying the execution of the *patta*, did not deny that at the time of his ejection the plaintiff was their tenant, and

(1) I. L. R., 3 All., 81. (2) I. L. R., 3 Al., 521.  
(3) Weekly Notes, 1882, p. 58.

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the substantial part of the defence amounted to the contention that his ejection was not wrongful. Neither party asserted any rights which are inconsistent with or go beyond the relation of landlord and tenant, and the dispute thus raised could therefore appropriately form the subject-matter of an "application for the recovery of the occupancy of any land of which a tenant has been wrongfully dispossessed," within the meaning of cl. (n), s. 95 of the Rent Act (XII of 1881), which must therefore be understood to oust the jurisdiction of the Civil Court in this case. The rulings on which the learned Subordinate Judge has relied for the contrary opinion are not applicable to the present case. In *Muhammad Abu Jafar v. Wali Muhammad* (1) the defendants distinctly asserted a right in themselves which would be wholly inconsistent with the relation of landlord and tenant, whilst in *Sukhdaik Misr v. Karim Chaudhri* (2) the plaintiff distinctly stated that the defendants were simple trespassers wrongfully retaining possession after the expiration of the lease, and similar was the case in *Kanahia v. Ram Kishen* (3). The learned Subordinate Judge has held that the relation of landlord and tenant does not exist between the parties in the present case, because, by reason of the ejection of 5th June, 1882, the plaintiff ceased to be a tenant of the defendants, but that ejection is stated to be the cause of action for this suit, and the relation of landlord and tenant being admitted to have existed between the parties at that time, the plaintiff's complaint amounts to a claim such as would form the matter of an application under cl. (n), s. 95 of the Rent Act. This view of the law is not inconsistent with the *ratio decidendi* of either of the two contrary opinions expressed by the learned Judges in the Full Bench case of *Shimbu Narain Singh v. Bachcha* (4). In the present case, however, it appears that the relation of landlord and tenant being admitted to have existed at the time, the defendants, as landholders, applied according to law to eject the plaintiff by service of notice, and the plaintiff's objections to ejection being overruled by the Revenue Court, he was ejected from the holding. The matter was one exclusively within the jurisdiction of the Revenue Court, and since in the present case the pleadings of the parties do not raise any question of title

(1) I. L. R., 3 All. 81. (3) I. L. R., 2 All., 429.

(2) I. L. R., 3 All. 521. (4) I. L. R., 2 All., 200.

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such as would be inconsistent with, or in excess of, the relation of landlord and tenant, the suit was not cognizable by the Civil Court.

For these reasons we uphold the decrees of the lower Courts dismissing the suit, and dismiss this appeal with costs.

*Appeal dismissed.*

1883  
August 7.

## FULL BENCH.

*Before Mr. Justice Straight, Mr. Justice Oldfield, Mr. Justice Brodhurst, and Mr. Justice Tyrrell.*

GODHA AND ANOTHER (PLAINTIFFS) v. NAIK RAM AND ANOTHER (DEFENDANTS).\*

*Suit for personal property—Suit to establish right—Small Cause Court suit—Civil Procedure Code, s. 283—Act XI of 1865, s. 6.*

A person, who had claimed moveable property attached in execution of a decree as his own, and whose claim had been investigated and disallowed under ss. 278 to 281 of the Civil Procedure Code, sued, the property being under attachment, the decree-holder and the judgment-debtor in a Court of Small Causes for the property or its value. *Held* that the suit could not properly be regarded as a suit “for personal property or for the value of such property,” within the meaning of s. 6 of Act XI of 1865, but must be regarded as a suit to establish the plaintiff’s right, in the sense of s. 283 of the Civil Procedure Code, inasmuch as the plaintiff could not recover the property without clearing out of his way the order of attachment, which he could only do by establishing his right in the sense of s. 283, and therefore the suit was not one cognizable in a Court of Small Causes.

*Janakiammal v. Vitenadien* (1), *Kundeme Naine Booshe Naidoo v. Ravoo Lutchmeepaty Naidoo* (2), *Gordhan Pema v. Kasandas Balmukundas* (3), *Chhaganlal Nagardas v. Jeshan Rav Dalsukhram* (4), *Balkrishna v. Kisansing* (5), and *Radha Ki hen v. Chotey Lal* (6) dissented from.

THIS was a reference by Babu Promoda Charan Banarji, Judge of the Court of Small Causes at Agra, under s. 617 of the Civil Procedure Code. The question of law referred was “whether a suit under s. 283 of the Civil Procedure Code, for establishment of right to, and recovery of, moveable property, by an unsuccessful claimant, is cognizable by a Court of Small Causes, where the value of the property is within the pecuniary limit of the jurisdiction of such Court.” The facts which gave rise to the reference were

\* Reference under s. 617 of the Code of Civil Procedure, by Babu Promoda Charan Banarji, Judge of the Court of Small Causes at Agra, dated the 15th May, 1883.

(1) 5 Mad. H. C. Rep., 191.

(2) 8 Mad. H. C. Rep., 36.

(3) 1. L. R., 3 Bom., 179.

(4) 1. L. R., 4 Bom., 503.

(5) 1. L. R., 4 Bom., 503.

(6) N.-W. P. H. C. Rep., 1871, p. 156.