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April 30.

Before Mr. Justice Aikman.

THAKUR DIN (PLAINTIFF) v. MANNU LAL (DEFENDANT).*

Act No. XII of 1881 (North-Western Provinces Rent Act) section 95, cls. (m) and (n)—“Wrongful dispossession”—Dispossession by process of law—Suit to recover damages for such dispossession—Civil and Revenue Courts—Jurisdiction.

The expressions “wrongful dispossession” in clause (m) and “wrongfully dispossessed” in clause (n) of section 95 of Act No. XII of 1881, do not include a dispossession by order of Court, though such order may be subsequently reversed on appeal. Where therefore a tenant who is evicted under section 36 and the following sections of the Rent Act, but afterwards reinstated by order of a superior Court of Revenue, sues the evicting zamindar for damages, such a suit may be brought in a Civil Court. *Sawai Ram v. Gir Prasad Singh* (1) and *Dhundu Bhagat v. Lalji Pande* (2) referred to.

THE facts of this case are fully stated in the judgment of Aikman, J.

Munshi *Ram Prasad*, for the appellant.

Maulvi *Ghulam Mujtaba*, for the respondent.

AIKMAN, J.—The plaintiff Thakur Din, who is appellant here, was a tenant of agricultural land of which the defendant respondent was landholder. The defendant served the plaintiff with a notice of ejectment from his holding under the provisions of section 36 of the Rent Act. The tenant thereon presented an application under the provisions of section 39 of that Act, contesting his liability to be ejected. The question was determined by the Assistant Collector adversely to the tenant, and the Assistant Collector’s decision was upheld on appeal by the Commissioner. On the 18th of November, 1893, the Board of Revenue set aside the orders of the subordinate Courts of Revenue, and held that the plaintiff was a tenant with right of occupancy, and that the notice of ejectment was invalid. Meanwhile the landholder had taken proceedings under section 40 of the Rent Act, and caused the plaintiff to be ejected from his holding on the 24th of September, 1892. After the plaintiff had won his case in the Board of Revenue, he applied to

*Second Appeal No. 360 of 1896, from a decree of B. Lindsay, Esq., District Judge of Banda, dated the 18th March 1896, reversing a decree of Munshi Shankar Lal, Subordinate Judge of Banda, dated the 29th August 1895.

(1) I. L. R., 2 All., 737.

(2) 1 Legal Remembrancer, R. and R., 183.

be replaced in possession of his holding, and he obtained possession on the 17th of February, 1894. He brought the present suit in the Civil Court for the recovery of compensation for the period during which he had been out of possession of his holding. He obtained a decree from the Subordinate Judge, but on appeal the District Judge of Banda set aside this decree and dismissed the plaintiff's suit, holding that the plaintiff's remedy was an application under clause (m) of section 95 of the Rent Act, and that therefore the Civil Court had no jurisdiction. The learned District Judge relied on a decision of the Board of Revenue in *Khareswari v. Maharaja Partab Narain Singh*, No. 4 of the Selected Decisions of the Board of Revenue for 1892. That case arose under the Oudh Rent Act, which materially differs from Act No. XII of 1881, inasmuch as sub-section (2) of section 60 of the Oudh Act reserves to the tenant a right to institute a suit against his landlord to recover compensation for illegal ejection under sub-section (1) of that section. Sub-section (1) corresponds to section 40 of Act No. XII of 1881, but the latter section contains no provision at all corresponding to the provisions of sub-section (2) of section 60 of the Oudh Rent Act; the ruling therefore upon which the lower appellate Court relies, has no bearing upon the present case.

The question for decision in this appeal is whether a dispossession by process of Court can be considered to be a "wrongful dispossession" within the meaning of clause (m) of section 95. In my opinion it cannot be so considered. This was held in a previous decision of the Board of Revenue in *Dhundu Bhagat v. Lalji Pande* (1). In *Sawai Ram v. Gir Prasad Singh* (2) it was held by this Court that where an occupancy tenant had been dispossessed by a Civil Court and had afterwards been reinstated, this dispossession was not a wrongful dispossession within the meaning of clauses (m) and (n) of section 95. Clause (m) provides for an application for compensation for wrongful dispossession: the next clause (n) refers to an application for the

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(1) 1 Legal Remembrancer, R. & R., p. 183.

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recovery of the occupancy of any land of which a tenant has been wrongfully dispossessed. I think the expressions "wrongfully dispossession" in clause (m) and "wrongfully dispossessed" must be read in the same sense, and in my opinion no application could be entertained under clause (n) to recover possession of land from which a tenant had been dispossessed by order of Court. Another consideration which leads me to the same view is the short period of limitation provided by clause (e) of section 96, for applications under clauses (m) and (n) of section 95. Clause (e) of section 96 declares that such applications shall not be brought after six months from the date of the wrongful dispossession. In the present instance, the plaintiff was dispossessed on the 24th September, 1892, and it was not until upwards of a year afterwards that the Board of Revenue declared that he ought not to have been ousted from his holding. If his remedy therefore was by an application under clause (m) and not by a suit in the civil Court, he would in the present case have no redress. For the above reasons I am of opinion that the decision of the lower appellate Court was wrong. I allow this appeal, and, setting aside the decree of the lower appellate Court, remand the case under the provisions of section 562 of the Code of Civil Procedure with directions to the District Judge to restore the appeal to his file of pending appeals and proceed to dispose of it on the merits, as raised in the other grounds in the memorandum of appeal to his Court. The appellant will have his costs in this Court in any event.

Appeal decreed and cause remanded.

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May 4.

Before Sir John Edge, Kt., Chief Justice and Mr. Justice Blair.

BIRJ NATH DE AND ANOTHER (DEFENDANTS) v. CHANDAR MOHAN BANERJI (PLAINTIFF).*

Will—Application for probate—Issue raised as to testator's title to property purporting to be dealt with by the will—Practice.

It is not the duty of a Court entertaining an application for grant of probate to consider any issue as to the title of the testator to the property with

* Appeal No. 2 of 1895 under section 10 of the Letters Patent.