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of land, was not treated in England as a suit having a local venue. See, article "Action" in volume 1 of Tomlin's Law Dictionary. The case would consequently come within the decision of their Lordships of the Privy Council in *Gurdyal Singh v. The Raja of Faridkot* (1). With this reply the record will be returned to the District Judge.

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

DUKHNA KUNWAR AND OTHERS (DEFENDANTS) v. UNKAR PANDE
(PLAINTIFF).*

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*Act No. XII of 1881 (North-Western Provinces Rent Act) section 95(n)—
Act No. XLX of 1873 (North-Western Provinces Land Revenue Act)
section 64—Civil and Revenue Courts—Jurisdiction—Jurisdiction of
Civil Courts where no remedy open to plaintiff in the Revenue Courts.*

A plaintiff brought his suit in a Civil Court alleging that he was entitled to the possession of certain land as a tenant at fixed rates, and that in consequence of the order of a settlement officer he had been dispossessed by certain persons, alleged by him to be trespassers without title, whom he made defendants together with the zamindar of the land in dispute.

Held that, inasmuch as the plaintiff could under the circumstances indicated in his plaint have obtained no relief from a Court of Revenue, the Civil Court was competent to entertain the suit and to give the plaintiff a decree for possession as against the defendants, other than the zamindar, who were found to be trespassers, notwithstanding that the Civil Court could not declare what was the nature of the plaintiff's tenancy. *Tarapat Ojha v. Ram Ratan* (2) and *Ajudhia Rai v. Parmeshar Rai* (3) distinguished.

THE facts of this case sufficiently appear from the judgment of the Court.

Mr. J. E. Howard, for the appellants.

Mr. B. E. O'Connor, for the respondent.

EDGE, C. J. and BLAIR, J.—In this suit the plaintiff claimed a declaration that he was a tenant at fixed rates and he claimed possession. The defendants to the suit parties No. 1 claim possession as the occupancy tenants, and others of the defendants claim title under them, and one defendant was the zamindar.

* Second Appeal No. 1088 of 1894, from a decree of R. Greeven, Esq., Officiating District Judge of Gházipur, dated the 15th September 1894 reversing a decree of Pandit Bansidhar, Subordinate Judge of Gházipur, dated the 17th March 1893.

(1) I. L. R., 22 Calc. 222.

(2) I. L. R., 15 All., 387.

(3) I. L. R., 18 All., 340.

It appears that at and prior to the time of the revision of the settlement the plaintiff's name was entered in respect of the holding as a tenant at fixed rates. The plaintiff was at that time a minor under the guardianship of his aunt. The settlement officer subsequently in the course of the settlement entered in the record of the revision of settlement the defendants parties No. 1 as the tenants at fixed rates of the holding. The Subordinate Judge dismissed the plaintiff's suit. The District Judge in appeal found that the plaintiff was the tenant at fixed rates of the holding, that the defendants No. 1 and those claiming through them had no title, that the defendants No. 1 were trespassers, and gave the plaintiff a declaratory decree and a decree for possession. The defendants other than the zamindar have brought this appeal.

This is one of the class of cases which give the utmost difficulty to Civil Courts. Here is a case in which a thoroughly competent District Judge has found every material fact in favour of the plaintiff. He has found that the plaintiff is entitled to possession and that the defendants No. 1 and those claiming under them have no title whatever. It is a case in which the plaintiff during his minority when he was under the guardianship of his aunt, with only her to protect his interests, was despoiled by the defendants No. 1.

The question before us is one as to the jurisdiction of the Civil Court to entertain the suit. Before deciding that question let us see what remedy the plaintiff entitled to possession would have in a Court of Revenue. He would in this case in our opinion have absolutely no remedy in a Court of Revenue. The defendants No. 1 are not his tenants, therefore he could not bring ejectment in a Court of Revenue. The plaintiff was not dispossessed by the zamindar or by anyone having any title under the zamindar, consequently section 95 cl. (n) of Act No. XII of 1881 would not apply. So far as we can see, if the plaintiff is confined to a Court of Revenue for his remedy, the Court of Revenue can afford him no remedy whatever. It could not have been in the

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contemplation of the Legislature when they created Courts of Revenue and Civil Courts that a man who was entitled to possession as against a trespasser, who was not his landlord, and who had no title through his landlord, should be left for ever out of possession and without any remedy. That consideration in our opinion points strongly to the conclusion that the Civil Court had in this case jurisdiction to give the plaintiff a decree for possession. When we turn to section 64 of Act No. XIX of 1873 we find that when a Settlement Officer makes an entry in the settlement record on the basis of possession of the claimant, the section provides that "all persons not in possession, but claiming the right to be so, shall be referred by him to the proper Court." The inference from that is that in such cases the Settlement Officer is not the proper Court, and some other Court must be intended. The Court of Revenue might be intended where section 95 cl. (n) applied. Presumably the Civil Court must be intended where the Court of Revenue can afford no relief.

It was contended strongly by Mr. *Howard* that the Full Bench ruling in *Ajudhia Rai v. Parmeshar Rai* (1), governed this case. He also referred to the Full Bench ruling in *Tarapat Ojha v. Ram Ratan* (2). The latter case has no bearing on the case now before us, for in that case section 95 cl. (n) of Act No. XII of 1881 applied and the Court of Revenue could grant a remedy. The former case, that of *Ajudhia Rai v. Parmeshar Rai*, is much nearer the case which is now before us. The case before the Full Bench was one in which the plaintiffs claimed a declaration that they were entitled as tenants at fixed rates, and they claimed to have the entries made at the recent settlement invalidated. The Civil Court could not invalidate the entries at a settlement, and it was clearly decided in that case that a Civil Court cannot give any decree declaring or deciding the status of an agricultural tenant. So far as that case applies here, it shows, and we agree with it, that the plaintiff's suit, so far as it claims any declaration as to his status, must be dismissed.

(1) I. L. R. 18 ALL. 340.

(2) I. L. R. 15 ALL. 387.

It is incompetent to a Civil Court to make any declaration whatsoever as to the status of a tenant of an agricultural holding. We do not think, however, that the Full Bench ruling in *Ajudhia Rai v. Parmeshar Rai* precludes us from giving a simple decree for possession to the plaintiff, who has proved his right to possession as against the defendants No. I and those claiming under them, and who has proved his case that he is the person entitled to the possession and that the defendants No. I and those claiming under them are simple trespassers.

We may observe that there is here no question between the plaintiff and the zamindar, although the zamindar was a defendant to the suit. The zamindar put in his written statement and alleged that the plaintiff was his tenant, and that the defendants No. I and those claiming under them had no title whatsoever.

We must say that we have had very considerable difficulty in dealing with this case and in seeing our way to giving the plaintiff his relief to the extent indicated. Mr. *O'Connor* has satisfied us that maintaining the decree below, so far as it is one simply for possession, we are not acting in conflict with the ruling of the Full Bench in *Ajudhia Rai v. Parmeshar Rai*. He has also satisfied us that we are bound, on the findings of the District Judge, to maintain to that extent the judgment of the District Judge, as otherwise the plaintiff entitled to possession would have no remedy, the Court of Revenue being incompetent under the circumstances of the case to put him in possession.

We allow the appeal to the extent that we vary the decree of the lower appellate Court by making it simply a decree for possession to be delivered to the plaintiff as against all the defendants except the zamindar. As the plaintiff has substantially succeeded in this appeal, we allow him two-thirds of the costs of this appeal and of the suit. The defendants appellants will have one-third of the costs of this appeal and of the suit.

Decree modified.

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