

TYRRELL J.—I concur in all respects.

KNOX J.—I fully agree with the learned Chief Justice, that section 43 is not a section which governs or applies to proceedings in execution.

BLAIR J.—I concur entirely in the order proposed and the reasons given by the learned Chief Justice.

BURKITT J.—I also concur in the judgment of the learned Chief Justice, and I only desire to add that in my opinion section 43 of the Code of Civil Procedure is a section which deals with the frame and initiatory stages of a suit, and is not applicable, after judgment and after the rights of the parties have been decided, to proceedings in execution, any more than, for example, section 44 would be applicable. As to the case now before me I have no doubt that the Munsif, by his order of the 23rd of December 1887, did no more than dispose of the execution application immediately before him, namely, the application for recovery of the amount of costs and damages decreed, and that his order had no effect whatever on that portion of the decree which gave the judgment-debtor a right to possession of certain land. I concur in dismissing this appeal with costs.

AIKMAN J.—I concur with the learned Chief Justice in thinking that this appeal should be dismissed with costs.

Appeal dismissed.

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

SUBARNI AND ANOTHER (DEFENDANTS) v. BHAGWAN KHAN AND OTHERS
(PLAINTIFFS).*

Jurisdiction—Civil and Revenue Courts—Act No. XII of 1881 (North-Western Provinces Rent Act), sections 95, 96.

One Nathu was an occupancy tenant. On his death his widow Jhari continued in occupation of the occupancy holding. After the death of Jhari, one Snbarni, alleging herself to be the daughter of Nathu and Jhari, applied to the Court of Revenue to have her name entered in the village papers. occupancy tenant of Nathu's holding in succession to him. The zamindárs w

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made parties to that proceeding. The Court of Revenue decided in favour of the applicant Subarni. The zamindars appealed on the revenue side, but their appeal was dismissed.

Held that no suit would lie in a Civil Court on the part of the zamindars for a declaration that they and not Subarni were entitled to possession of the occupancy holding in question, and that it should be declared that Subarni was not the daughter of Nathu.

THE facts of this case are fully stated in the judgment of the Court.

Pandit *Sundar Lal* and Munshi *Gobind Prasad*, for the appellants.

Mr. *Abdul Majid*, for the respondents.

The judgment of the Court (EDGE, C. J., KNOX, BLAIR, AIKMAN and BLENERHASSETT J. J.) was delivered by EDGE, C. J. :—This is a suit brought by zamindars in which they claim maintenance of possession over certain biswas of land, and ask that it may be declared that after the death of one Nathu Kandu and of his widow Jhari the plaintiffs as zamindars were legally in possession of the occupancy holding of Nathu Kandu, and that the female defendant to the suit was not the daughter of Nathu Kandu, and that the order of the Court of Revenue declaring her to be the occupancy tenant may be declared to be ineffectual.

Nathu Kandu was an occupancy tenant. On his death his widow Jhari continued in occupation of the occupancy holding, and on her death the present dispute arose. The female defendant Subarni, claiming to be the daughter of Nathu by his wife Jhari, asked the Court of Revenue for possession of the occupancy holding as an occupancy tenant in succession to her parents. On that application the Court of Revenue decided that Musammam Subarni was, as she alleged, the daughter of Nathu, and entered her name in the papers as the occupancy tenant of the holding. The zamindars, who are plaintiffs in this suit, were parties to that proceeding. Being dissatisfied with the decision of the Court of Revenue they went to the Court of Appeal on the Revenue side. Their appeal was dismissed. They then commenced a fresh campaign by filing the petition of plaint in this case in the Court

of the Munsif of Gházipur. The question in this suit was exactly the question in the Revenue Court proceedings. The Munsif, coming to a different conclusion on the facts from those arrived at by both the Courts of Revenue, decreed the claim. The Subordinate Judge in appeal confirmed the decree of the Munsif. The defendants, *viz.*, Musammat Subarni and her son, brought this appeal. It was decided by a Judge in single bench. There was an appeal from his judgment under section 10 of the Letters Patent to a Bench of two Judges and that appeal was referred to the Full Bench.

Now it is a fact that the application to the Court of Revenue was made by these defendants in this suit. They then sought a decision that they were occupancy tenants of the holding in succession to Nathu. On that application the Court of Revenue decided that they were. The Court of Revenue had to decide the preliminary point, first, namely, whether they had made out their pedigree, *i. e.*, that Musammat Subarni was the daughter of Nathu, as she alleged she was, and his heir. Having found that in favour of Musammat Subarni it made the order the result of which was that the entry in the Revenue records now sought to be impugned was made.

The argument on behalf of the plaintiff has gone almost to this length. It was contended that sections such as section 10 of Act No. XII of 1881 only apply when the position of landlord and tenant is admitted, and that a Court of Revenue has no jurisdiction finally to decide a matter under section 10 unless the position between the parties of landlord and tenant is admitted. Precisely the same line of argument, if it was well founded, would lead to the logical conclusion that the Court of Revenue could try no suit for arrears of rent under section 93 (a) unless the position between the parties of landlord and tenant was admitted. That would reduce the position of the Court of Revenue to the position held by arbitrators appointed by consent of parties. If the Court of Revenue could only try suits for rent, for example, or applications made under section 10, when the relationship between the parties of

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landlord and tenant was admitted, it would be in the power of the defendant to a suit in the Court of Revenue or of the respondent to an application in that Court to oust the jurisdiction of the Court of Revenue by simply denying the legal relation alleged to exist between him and the plaintiff. The result would be that Courts of Revenue would be Courts having jurisdiction only where the parties consented. That would be rather an extraordinary conclusion to arrive at when we bear in mind that suits under section 93 of Act No. XII of 1881 can only come before the Civil Court in the stage of appeal, and that the jurisdiction of the Civil Court is absolutely barred, either as a Court of original jurisdiction or as a Court of appeal, in all applications to which section 95 of that Act applies. Not only was the dispute in this case one in which an application under section 95 of Act No. XII of 1881 might have been made, but the application of Musammat Subarni and her son was in substance an application under section 95. It was an application which could not be granted without a determination in her favour of the question as to whether she was a tenant of the occupancy holding. In our view this question cannot be litigated in the Civil Court. The decree of the Court of Revenue is final, that decision, by reason of section 96 (b), having the effect of a judgment of a Civil Court, subject to appeal to a Court of Revenue. We allow this appeal and dismiss the suit with costs in all Courts.

Appeal decreed.

APPELLATE CIVIL.

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Before Mr. Justice Know and Mr. Justice Blair, and subsequently before Sir John Edge, Kt., Chief Justice and Mr. Justice Blennerhassett.

MUHAMMAD SIRAJ-UL-HAQ AND OTHERS (PLAINTIFFS) v. IMAM-UD-DIN,
(DEFENDANT).*

Act No. X of 1863, sections 14, 15—Religious endowment—Jurisdiction—Court Fee—Act No. VII of 1870 (Court Fees Act) Sch. ii, Art. 17, cl. 6.

Held that Act No. XX of 1863 was applicable to an endowment whereby certain shops had been purchased by subscription and dedicated to the support of a mosque, and was also applicable in respect of a person in possession of the

* First Appeal No. 28 of 1896 from an order of L. G. Evans, Esqr., District Judge of Aligarh, dated the 14th December 1895.