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JAI KISHEN
v.
RAM LAL.

Babu *Jogindro Nath Chaudhri*, for the appellants.

The respondent was not represented.

AIKMAN, J.—The plaintiffs, who are appellants here, brought a suit for the removal of certain trees which had been planted by the defendant on the land which he held from the plaintiffs for cultivation. The suit was brought upwards of two years after the trees were planted. The lower appellate Court has dismissed the suit as barred by limitation, applying art. 32 of the second schedule to the Indian Limitation Act, 1877. In appeal it is contended that the suit is governed by art. 144 of the second schedule to the Limitation Act. That article has clearly no application to this suit, which is not a suit for possession. In the case of *Gangadhar v. Zahurriya* (1) art. 32 was held to be applicable to a suit like the present. That was a ruling of TYRRELL and MAHMOOD, J. J., and that ruling was concurred in by STRAIGHT, J., in *Musharaf Ali v. Iftikhar Husain* (2). The appeal therefore cannot be sustained. I may add that, in my opinion, the cognizance of the suit by the Civil Court was barred by the provisions of section 93 of Act No. XII of 1881, and in this opinion I am fortified by the decision in *Deodat Tiwari v. Gopi Misr* (3). I dismiss this appeal, but without costs, as the respondent is not represented.

Appeal dismissed.

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July 15.

Before Sir Louis Kershaw, Kt., Chief Justice and Mr. Justice Banerji.

KALIANI (DEFENDANT) v. DASSU PANDE AND OTHERS (PLAINTIFFS).

Jurisdiction—Civil and Revenue Courts—Suit in ejectment against a trespasser—Res judicata—Entries in revenue records.

Although a Civil Court cannot give a decree declaring or deciding the status of an agricultural tenant, yet where a plaintiff, having no remedy in the Revenue Courts, sues, on the allegation that he is a tenant entitled to possession, to eject a trespasser, it is competent to a Civil Court to grant a decree for possession on the ground that the plaintiff is a tenant, the class of his tenancy being left to the Revenue Courts to determine.

First Appeal from Order No. 46 of 1898, from an order of H. D. Griffin, Esq., District Judge of Azamgarh, dated the 4th April 1898.

(1) I. L. R., 8 All., 446.

(2) I. L. R., 10 All., 634.

(3) Weekly Notes, 1882, p. 102.

Held also, that an entry in a revenue record which is based solely on the fact of possession cannot operate as *res judicata* on a question of title subsequently raised in a Civil suit. *Ajudhia Rai v. Parmeshar Rai* (1), and *Dukhna Kunwar v Unkar Pande*, (2), referred to.

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

Mr. *Abdul Ruooof*, for the appellant.

Mr. *J. Simson*, for the respondents.

KERSHAW, C. J., and BANERJI, J.—This is an appeal from an order of remand under section 562 of the Code of Civil Procedure. This is one of those cases in which the question of the conflict of the jurisdiction of Civil and Revenue Courts arises. The plaintiffs, who are respondents here, brought their suit for a declaration that they were occupancy tenants of the land in suit and for recovery of possession of that land. They alleged that the defendant had no right to it and that she was a trespasser. It appears that the name of the defendant was entered in the revenue papers as the tenant of this land. The plaintiffs made an application for amendment of that entry on the ground that they were entitled to the holding. That application was dismissed by the Revenue Court, and thereupon the present suit was brought. The Court of first instance dismissed the suit on the ground that it was one cognizable by a Court of Revenue, and it relied for that opinion on the ruling of the Full Bench in *Ajudhia Rai v. Parmeshar Rai* (1). The plaintiffs appealed to the District Judge. He held that in so far as the plaintiffs sought to obtain a declaration that they were the occupancy tenants of the land in suit, the suit was not cognizable by a Civil Court and that the claim had been rightly dismissed; but as regards the claim for possession, he held, relying on the ruling of this Court in *Dukhna Kunwar v. Unkar Pande* (2), that it was cognizable by the Civil Court. He accordingly made an order under section 562 of the Code of Civil Procedure remanding the case to the Court of first instance for trial on the merits.

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 KALIANI
 v.
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(1) I. L. R., 18 All., 340.

(2) I. L. R., 19 All., 452.

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In our judgment this case is almost on all fours with the ruling on which the learned Judge of the Court below has relied and we fail to see in what respect this case may be distinguished from the one in which that ruling was passed. As observed in that case, the plaintiffs could not obtain any relief by resorting to the Court of Revenue. By asking that Court to determine the class of their tenancy under section 10 of Act No. XII of 1881 and obtaining a decision under clause (a) of section 95 of that Act, they could not recover possession of the holding. As they did not allege that the zamindar had dispossessed them, and as the defendant did not claim to have been put into possession by the zamindar, they could not make an application under clause (n) of that section. They are thus clearly without remedy, unless that remedy could be given them by a Civil Court. In the ruling to which we have referred it was held that, although the Civil Court could not grant a decree declaring or deciding the status of an agricultural tenant, the only Court in which a person claiming to be such a tenant could sue to recover possession from an alleged trespasser was the Civil Court. With that opinion we fully agree. This case was not one in which it was necessary that the question of the status of the plaintiffs tenancy *quod* status had to be determined; if the plaintiffs were tenants of any description and if the defendant was a trespasser, the plaintiffs were entitled to succeed. In this respect this case does not fall within the purview of the Full Bench ruling in *Ajudhia Rai v. Parmeshar Rai* (1), and we think that the conclusion at which the learned Judge of the Court below has arrived is a right conclusion.

It was further contended before us on behalf of the appellant that, by reason of the order of the Revenue Court refusing to amend the entry in the revenue papers, the matter had become *res judicata*. We are unable to accede to this contention. The order of the Revenue Court was made under section 102 of Act No. XIX of 1873. That section provides that in disputed cases the Collector of the District or Assistant Collector, shall make

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

such inquiry as may be necessary to ascertain the truth and cause the record to be amended accordingly. This section in our judgment does not confer upon the Collector of the District or Assistant Collector any greater powers than what a settlement officer would have under section 64 of that Act. By section 63 the settlement officer is to specify in the record of rights all particulars relating to tenants of every description. By section 64 all entries in the record made under section 63 shall be founded on the basis of actual possession, and all disputes regarding such entries shall be investigated and decided on that basis. The inquiry referred to in section 102 is, in our opinion, the inquiry which in the case of disputes a settlement officer is competent to make under section 64 on the basis of actual possession. That section further provides that persons not in possession, but claiming a right to be so, shall be referred to the proper Court. The proper Court mentioned in the section evidently must be, as observed in *Dukhna Kunwar v. Unkar Pande* (1), a Court other than the Court of the settlement officer, and where the Revenue Court would not have jurisdiction to afford relief it must be the Civil Court. An adjudication on the basis of possession, which an adjudication under section 102 must necessarily be, cannot, in our opinion, operate as *res judicata* on a question of title. In our judgment this appeal is untenable. We dismiss it with costs.

Appeal dismissed.

FULL BENCH.

Before Sir Louis Kershaw, Kt., Chief Justice, Mr. Justice Blair, Mr. Justice Banerji, Mr. Justice Burkitt, and Mr. Justice Aikman.

MAQBUL FATIMA (JUDGMENT-DEBTOR) *v.* LALTA PRASAD AND ANOTHER
(DECREE-HOLDERS)*

Execution of decree—Construction of decree—Act No. IV of 1882 (Transfer of Property Act), section 88—Civil Procedure Code, Sections 219, 206—Costs—Decree apparently awarding costs twice.

A decree drawn up under section 88 of the Transfer of Property Act, 1882, was properly framed in accordance with the requirements of that section, but,

* First Appeal No. 251 of 1897, from an order of Babu Madho Das, Subordinate Judge of Bareilly, dated the 7th August 1897.

(1) I. L. R., 19 All., 452.

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KALIANI
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July 20.