1897
June 22.

Before Mr. Justice Blair.

DALIP RAI (DEFENDANT) *v.* DEOKI RAI (PLAINTIFF).*

DALIP RAI (DEFENDANT) *v.* SUKHDEO RAI (PLAINTIFF).*

DALIP RAI (DEFENDANT) *v.* JOKHU RAI AND ANOTHER (PLAINTIFFS).*

Act No. XII of 1881 *(N.-W. P. Rent Act), section* 95 *(n)—Landholder and tenant—Effect on tenant's rights of his neglecting to apply under section* 95.

A tenant of certain *muafi* land was dispossessed by his zamindars, as he alleged, wrongfully. The dispossessed tenant *did not* avail himself of the remedy provided by section 95 clause (*n*) of Act No. XII of 1881; but some time after the expiry of the period of limitation for an application under that section, he dispossessed the zamindars, who had meanwhile taken the land in suit into their own cultivation. The zamindars thereupon sued in the Civil Court for the ejectment of the former tenant as a trespasser. *Held*, that the defendant could not set up in answer to this suit his status as tenant which he had lost by not availing himself within limitation of the means provided by section 95, clause (*n*) of Act No. XII of 1881, to contest his own ejectment.

THESE were three connected appeals arising out of the following facts:—The plaintiffs, with others, were purchasers of a village, in which was comprised certain resumed muafi land, which had formerly been an assignment, or *jagir*, for the support of chaukidars. Before the assignment of the village to the plaintiffs and their cosharers this land appears to have been settled with the defendant. The purchasers subsequently partitioned the village, and the plots of land in suit, forming a portion of the above-mentioned resumed muafi, fell to the shares of the respective plaintiffs.

The plaintiffs came into Court, denying that the defendant had ever been a tenant of the land in question, and alleging that they had each and all been forcibly ejected by the defendant; and they sued for recovery of possession of their respective plots by ejectment of the defendant.

The defendant pleaded *inter alia* that he was a tenant and that the suits were not cognizable by a Civil Court. The Court

* Second Appeals Nos. 430, 431 and 432 of 1897, from decrees of Maulvi Muhammad Ismail Khan, Additional Subordinate Judge of Ghazipur, dated the 26th April 1897, reversing decrees of Munshi Achal Behari, Munsif of Ghazipur, dated the 20th February 1897.

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of first instance (Munsif of Ghazipur) gave effect to this plea and dismissed the plaintiffs' suits.

The plaintiffs appealed. The lower appellate Court (Additional Subordinate Judge of Ghazipur) found that the defendant had been a tenant up to some time in 1892, when he had been wrongfully dispossessed by the plaintiffs; but that, inasmuch as he had not availed himself of the remedy provided by law in clause (*n*) of section 95 of Act No. XII of 1881 within the period limited by section 96 of that Act, he had lost his title as well as his remedy. The Court accordingly decreed the plaintiffs' claim.

The defendant thereupon appealed to the High Court.

Munshi *Haribans Sahai*, for the appellant.

Mr. *Abdul Majid*, for the respondents.

BLAIR J.—It is needless to recapitulate the admitted facts of this case. The plaintiff acquired title from a person who had resumed the land theretofore assigned for the support of chaukidars. Originally this plaintiff and the plaintiffs in the two connected cases held equal shares in the plot in question. They and the other co-sharers subsequently partitioned the land, and each became possessed in severalty of his own plot. The plaintiffs sue for possession each of his own plot on the allegation that the defendants are mere trespassers. The defendant alleges in his defence that he was, at the time of the dispossession alleged against him by the plaintiffs, the tenant of the plot in suit. Numerous collateral and subsidiary issues were raised, which with it seems unnecessary to deal in deciding these second appeals. The suits of the plaintiffs were dismissed in the court of first instance on the finding that the defendant was a tenant. The plaintiffs appealed, and in the lower Appellate Court it was found that the defendant had been a tenant up to some time in 1892, when he was wrongfully dispossessed by the present plaintiffs; but that inasmuch as he had not availed himself of the remedy provided by law in clause (*n*) of section 95 of Act No. XII of 1881 within the period limited by section 96 of that Act,

he had lost his title as well as his remedy. It seems to me that that judgment is sound. Section 95 of Act No. XII of 1881 provides that the Revenue Courts only shall have jurisdiction to deal with the subjects and matters of the nature for which applications are prescribed as the proper remedy in that section. The section does not provide merely that no plaintiff may bring a suit on a subject or matter in relation to which one of such applications might be made, but that the Civil Court shall not "take cognizance of any dispute or matter" upon which an application of such a nature might have been made. The defendant here is setting up an existing tenancy in himself, which, if it did exist, would entitle him to recover possession and to continue in possession, up to and at the time when he himself forcibly dispossessed the plaintiffs. In other words, it is contended that he might lie by and neglect to take the steps provided by law within the time limited by law to recover the possession from which he had been wrongfully ousted and might by his own laches oust the jurisdiction of the Revenue Court and set up the jurisdiction of the Civil Court in relation to a matter which, if the subject of contention, could have been brought only in the Revenue Court within a period of six months. That would be the result of allowing him to set up in a Civil Court his title as a tenant in answer to a charge of trespass after the expiration of that period. It seems to me that, apart from the wording of section 95 of the Rent Act, it was intended that the landlord should not be liable for an indefinite time to the dispossession, perhaps, of some tenants whom he had been induced to let in as tenants, and who perhaps might have incurred heavy expenses, in the belief that the excluded tenant had by declining to avail himself of the remedy provided by law manifested his intention of abandoning his tenancy. That disposes of the one question in this appeal. There is a secondary one, namely, that of *res judicata*, into which I decline to allow the appellant to enter. It was expressly stated by the Judge in the lower Appellate Court that that point and another or others were not pressed on him. It seems to me that it

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is not open to a litigant to practically abandon a portion of his contention in one Court and then at his convenience to resuscitate it in another. The effect is that these appeals will be dismissed with costs.

Appeals dismissed.

REVISIONAL CIVIL.

1898
June 27.

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

CHATARBUJ DAS (DEFENDANT) *v.* GANESH RAM (PLAINTIFF).*

Civil Procedure Code, section 516—*Award—Decree passed on award filed in Court without notice of its filing being sent to the parties—Revision.*

Held, that it was a good ground for revision of a decree based upon an award filed in Court that no notice of the filing of the award was given by the Court to the parties as required by section 516 of the Code of Civil Procedure, even though the applicant in revision might have received information *aliunde* that the award had been filed. *Rangasami* v. *Muttusami* (1) followed.

THE plaintiff and defendant in this case having agreed to refer the matters in dispute between them to arbitration, the plaintiff applied to the Court to have the agreement of reference filed in Court. A summons was issued to the defendant, but he did not put in a defence. The case was proceeded with *ex parte*, and the agreement of reference was filed in Court, and ultimately, on the 17th February 1898, the award based on the said agreement was filed within the time limited by the Court. The defendant on the 3rd of March 1898, filed a *vakalat-namah* authorizing his pleader to object to the award, and on the 18th March objections were filed. The material objection of the defendant was that no notice of the filing of the award had been given to him by the Court as required by section 516 of the Code of Civil Procedure. The Court (Subordinate Judge of Mainpuri) held that under the circumstances of the case such notice was not necessary, as the defendant in fact knew that the award

* Civil Revision No. 24 of 1898.

(1) I. L. R., 11 Mad., 144.