

APPELLATE CIVIL.

1898
December 7.*Before Mr. Justice Burkitt and Mr. Justice Dillon.*

RAM SUKH AND OTHERS (DEFENDANTS) v. GOKUL CHAND (PLAINTIFF).*

Jurisdiction—Civil and Revenue Courts—Act No. XII of 1881 (N.-W. P. Rent Act); sections 34 et seqq, 95 (d) and 206 et seqq—Landholder and tenant—Suit to eject a tenant on the ground that the tenant had denied the landholder's title.

The reason which a landholder may have for desiring to eject a tenant of agricultural land has nothing to do with the procedure to be adopted for the tenant's ejectment. Where the procedure laid down in sections 36 *et seqq* of the North-Western Provinces Rent Act, 1881, is available, the landholder must adopt that procedure, and the mere fact that the landholder's alleged cause of action is the denial by the tenant of the landholder's title will not give the landholder a right to sue for ejectment in a Civil Court.

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

Mr. J. Simeon for the appellants.

Mr. Roshan Lal and Pandit Sundar Lal for the respondent.

BURKITT and DILLON, JJ.—In the suit out of which this appeal has arisen the plaintiff, a zamindar, sued to eject the defendants, who were his tenants. The suit was brought in a Civil Court, and the appeal before us is one from the Court of the Subordinate Judge of Saharanpur. The suit is founded on the allegation that the defendants, being tenants without rights of occupancy, have denied the landholder's title and have set up a title as owners in themselves. The landholder therefore sues to eject them. A great part of the judgment of the lower Court is occupied in discussing the question as to whether a tenant of agricultural land who denies his landlord's title thereby renders himself liable to ejectment. We do not mean to enter into that question further than to say that neither of us—one of us having had a very long experience at the bar, and the other having had

* Second Appeal No. 831 of 1896, from a decree of L. G. Evans, Esq., District Judge of Aligarh, dated the 26th May 1896, confirming a decree of Babu Bepin Behari Mukerji, Subordinate Judge of Aligarh, dated the 13th June 1896.

1898

RAM SUKH

v.

GOKUL
CHAND.

a very long experience as a revenue officer—are aware of the existence in these Provinces of the common law respecting that matter upon which the Subordinate Judge has founded his decision. But, putting that matter aside, the suit, in our opinion, fails and must be dismissed for two reasons. Firstly, because it violates the provisions of clause (b) of section 34 of the North-Western Provinces Rent Act. That section distinctly lays down that “no tenant shall be ejected otherwise than in execution of a decree or order under the provisions of this Act.” The defendants here were admittedly tenants. The plaintiff is the landlord. Secondly, the defendants according to the plaintiff’s showing, are tenants without a right of occupancy. To such a state of things the opening words of section 95 of the Rent Act apply, which say that:—“No Courts other than Courts of revenue shall take cognizance of any dispute or matter on which any application of the nature mentioned in this section might be made.” Now one of the applications mentioned in clause (d) of section 95 is an application by a landholder to have a notice of ejection issued and served under section 38. Section 38 supplies the machinery under which the provisions of section 36 are put into action, and section 36 provides that if a landlord desires to eject a tenant not having a right of occupancy, he shall have a notice of ejection served on such tenant. Then follow sections 37, 38, 39 and 40, which provide the subsidiary machinery for giving effect to a notice issued under section 36. Now the defendants in this case being, according to the respondent, tenants without right of occupancy, and being tenants whom the landholder desired to eject, it is perfectly clear that this is a case in which an application might be made under section 95, clause (d) of the Rent Act. The reason which the landholder may have for desiring to eject the tenant is perfectly immaterial. The law does not require him to state any reason. All that section 36 requires is that he should be desirous of ejecting the tenant. He is not bound to give any reason for that desire, whether he wishes to eject the tenant as a troublesome person, as one who denies his title, or for any other

reason. It therefore follows, in our opinion, that this suit is one the cognizance of which by a Civil Court is absolutely forbidden by section 95, the matter of the suit being one in which an application might be made under clause (d) of section 95 of the North-Western Provinces Rent Act. We quite fail to understand why the respondent, having at his disposal the summary procedure provided by section 36 and the following sections of the Rent Act, should have preferred to take his case into a Civil Court. This is not a case in which we can proceed under the provisions of section 206 and the subsequent sections of the North-Western Provinces Rent Act. As has been frequently held, these sections contemplate those cases only in which a suit would lie in the Rent Court: but the procedure in the present case in the Rent Court would be by application and not by suit. It therefore follows that we cannot apply to the proceedings in this case the sections mentioned above. For the above reasons we allow this appeal. We set aside the judgment and decree of the lower appellate Court, and we direct that this suit do stand dismissed with costs in all Courts.

Appeal decreed.

Before Mr. Justice Banerji.

FIDA HUSAIN (DEFENDANT) v. MAULA BAKHSH (PLAINTIFF).*

Execution of decree—Civil Procedure Code, section 268—Attachment of debt—Payment of debt attached out of Court.

Where a debt, which had been attached under section 268 of the Code of Civil Procedure, was paid out of Court to the only person who, had the money due been paid into Court as required by the terms of the said section, would have been entitled to withdraw the said money from Court, and such payment was certified to the Court, it was *held* that such payment amounted to a sufficient compliance with the requirements of section 268.

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

Mr. *Amiruddin* for the appellant.

Maulvi *Ghulam Mujtaba* for the respondent.

1898

RAM SUKH
v.
GOKUL
CHAND.

1897

December 12.

* Second Appeal No. 876 of 1897 from an order of Maulvi Muhammad Abdul Ghafur, Subordinate Judge of Saharanpur, dated the 13th August 1897, modifying an order of Pandit Mohan Lal, Munsif of Deoband, dated the 11th January 1897.