

Government of the Lieutenant-Governor of the North-Western Provinces. Section 104 of the Act has been referred to. It provides that "suits under this Act shall be instituted in the district in which the subject of the suit, or some part thereof, is situate." When this is read with section 1 and with the preamble, we think it is clear that it only refers to cases in which the entire property for which rent is claimed, though a part of it may be in a different district from another part, is situate within the North-Western Provinces. The case of *Parmeshwar Das v. Sri Newas* (1) is, we think, rightly distinguished by the lower appellate Court. The decision in that case was based on the circumstance that the property to which the suit related, part of which was in Oudh, was leased by the plaintiff to the defendant at one lump amount for the whole. It was held that in such a case the effect of section 4-A and section 43 of the Code of Civil Procedure, read with section 104 of the North-Western Provinces Rent Act No. XII of 1881, was that the plaintiff was entitled to have his whole claim heard and determined in the Court of the Assistant Collector of Basti, in which he brought it. That decision would not apply to a case like the present in which there was a separate rent payable for each of the two holdings in question, and not one single sum payable as rent for the whole of the land. We agree with the judgment of the lower appellate Court, and we dismiss this appeal with costs.

*Appeal dismissed.*

*Before Sir Arthur Strachey, Knight, Chief Justice, and Mr. Justice Banerji.*

1901  
March 21.

BENI PRASAD KUARI (PLAINTIFF) v. BATULAN BIBI (DEFENDANT).  
Act No. XII of 1881 (*North-Western Provinces Rent Act*), section 189—  
*Suit for rent—Appeal admissible where the question has been whether any rent at all was payable by the defendant.*

*Held* that the words in section 189 of the North-Western Provinces Rent Act, 1881, "in which the rent payable by the tenant has been a matter in issue and has been determined," include cases in which the question whether any rent at all is payable by the tenant, has been a matter in issue, and has been determined. *Deo Charan Singh v. Beni Pathak* (2) referred to.

\* Second Appeal No. 505 of 1900 from a decree of R. Greeven, Esq., District Judge of Ghazipur, dated the 10th February 1900, confirming a decree of Maulvi Nizamuddin Ahmad, Assistant Collector of Ballia, dated the 25th January 1899.

(1) Weekly Notes, 1891, p. 47. (2) (1899) I. L. R., 21 All., 247.

1901

BENT  
PRASAD  
KUARI  
v.  
BATULAN  
BIDI.

THIS was a suit for rent of an agricultural holding brought under section 93(a) of the North-Western Provinces Rent Act, 1881. The defendant pleaded that before the period for which rent was claimed she had resigned the holding under section 31 of the Act, and that consequently no rent whatever was due by her. She also pleaded that the holding had been entirely carried away by the river. The Court of first instance (Assistant Collector) dismissed the suit on the ground that the holding had been entirely swept away by the river, and that no rent could therefore be claimed in respect of it. From this decision there was an appeal to the District Judge, who dismissed it, holding that no appeal lay to him, having regard to the provisions of section 189 of the Rent Act. The plaintiff thereupon appealed to the High Court.

The Hon'ble Mr. Conlan and Pandit Sundar Lal, for the appellants.

Maulvi Ghulam Mujtaba (for whom Mr. Abdul Majid), for the respondent.

STRACHEY, C. J. and BANERJI, J.—We think that the words in section 189 of the North-Western Provinces Rent Act, 1881, “in which the rent payable by the tenant has been a matter in issue and has been determined” may reasonably be held to include, and do include, cases in which the question whether any rent at all is payable by the tenant has been a matter in issue and has been determined. In other words, the expressions used will cover cases in which the matter which has been in issue, and has been determined, is not merely the rate or annual amount of rent payable by the tenant, but the existence of any rent payable by him. That view is supported by the judgment of Mr. Justice Knox and Mr. Justice Burkitt, in Second Appeal No. 280 of 1899, decided on the 22nd February 1901. We do not think that it is in any way inconsistent with the judgment in *Deo Charan Singh v. Beni Pathak* (1) or the judgments in any of the cases therein referred to. In saying that “the rent payable by the tenant” meant “the rate of rent, and not merely the actual amount of money due at any given time by the tenant to the landlord as rent,” it was not intended to give an exhaustive

definition of the words. We think therefore that an appeal lay in this case to the District Judge under section 189, and that we must allow this appeal, set aside the District Judge's decree and remand the case to him under section 562 of the Code of Civil Procedure for disposal on the merits. The appellants will have her costs of this appeal. Other costs will abide the result.

*Appeal decreed and cause remanded.*

1901

BENI  
PRASAD  
KUAER  
v.  
BATULAN  
BIBI.

Before Mr. Justice Banerji and Mr. Justice Aikman.  
SHEO NARAIN AND OTHERS (PLAINTIFFS) v. BENI MADHO AND  
ANOTHER (DEFENDANTS).\*

1901  
March 23.

*Award—Specific performance—Suit on an award not a suit for specific performance of a contract—Limitation—Act No. XV of 1877 (Indian Limitation Act), sch. II, Art. 113.*

*Held* that a suit to enforce an award cannot be treated as a suit for specific performance of a contract within the meaning of Article 113 of the second schedule to the Indian Limitation Act, 1877. *Sornacalli Ammal v. Muthayya Sastrigal* (1) followed. *Sukho Bibi v. Ram Sukh Das* (2) and *Raghubar Dial v. Madan Mohan Lal* (3) distinguished.

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

Mr. Muhammad Ishaq Khan and Pandit Madan Mohan Malaviya, for the appellants.

Pandit Moti Lal (for whom Munshi Gulzari Lal), for the respondents.

BANERJI and AIKMAN, JJ.—The plaintiff Lekhraj is one of the sons of Jai Ram, and the other plaintiffs are the sons of another son of Jai Ram. The defendants are Umrao, brother of Jai Ram, and Gaya Din and Beni Madho, sons of another brother of Jai Ram. The property in suit is alleged to have belonged to Chain, the father of Jai Ram. Chain died in 1865, and after his death the name of his son Bhawani Prasad, the father of the defendants Beni Madho and Gaya Din, was recorded in the revenue papers. Upon the death of Bhawani Prasad disputes arose in mutation proceeding; as to the entry of names,

\* Second Appeal No. 92 of 1898 from a decree of J. Sanders, Esq., District Judge of Cawnpore, dated the 1st November, 1897, reversing the decree of Syed Zain-ul-abdin, Subordinate Judge of Cawnpore, dated the 10th September 1895.

(1) (1900) I. L. R., 23 Mad., 593. (2) (1893) I. L. R., 5 All., 263.

(3) (1893) I. L. R., 16 All., 3.