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defendants and the legal representative of the deceased plaintiff. Accordingly, by consent of the parties, the Court passed an order allowing the appeal, setting aside the decree of the Court below, and remanding the case to that Court to be readmitted under its original number on the register, and to be tried on the merits. The suit has, in accordance with the order of this Court, been tried on the merits between the parties to the appeal, that is the present appellant and the present plaintiff respondent as representative of Musammât Zainab, with the result that a decree was passed in favour of the plaintiff.

It is now objected that a decree ought not to have been passed, nor should the respondent have been allowed to sue *in forma pauperis* without an inquiry first having been held as to her alleged pauperism, and a determination obtained in her favour upon that issue.

It appears to us that there is nothing in this objection, for this reason that the parties to this appeal by consent in Court agreed that the case should be remanded to the Court below for trial on the merits, and an order was made accordingly. This order presupposes that the parties were properly before the Court, and that the suit *in forma pauperis* had been properly instituted. It is too late now to seek to go behind this order. Accordingly, as none of the other objections in the memorandum of appeal have been pressed before us by the learned counsel for the appellant, for the reasons which we have stated, the appeal fails. We therefore dismiss it with costs.

Appeal dismissed.

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November 5.

Before Mr. Justice Knox and Mr. Justice Blair.

GOMTI KUNWAR (DEFENDANT) v. GUDRI (PLAINTIFF).*

Civil Procedure Code, section 13—Res judicata—Decision by a Court of Revenue in a suit for rent as to the genuineness of a document no bar to the determination of such issue by a Civil Court.

In a suit for rent brought in a Court of Revenue the plaintiff produced in support of his claim the counterpart of a lease alleged to have been executed by the defendant. The defendant denied execution, but the Revenue Courts, both original and appellate, decided against him that the counterpart was genuine. The defendant then brought a suit in a Civil Court, asking for

* First Appeal No. 62 of 1902, from an order of C. Rustomji, Esq., District Judge of Allahabad, dated the 30th of April, 1902.

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a declaration that the counterpart in question was not executed by him, and was not a genuine document. *Held*, that the decision of the Revenue Courts could not operate as *res judicata*, such Courts having no jurisdiction to try the subsequent suit, and section 13 of the Code of Civil Procedure being exhaustive on the subject of what constitutes a *res judicata*. *Gokul Mandar v. Pudmanund Singh* (1) referred to. *Rai Krishn Chand v. Mahadeo Singh* (2) distinguished.

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

Babu *Satya Chandar Mukerji*, Pandit *Madan Mohan Malaviya*, Babu *D. N. Ohdedar* and *Munshi Datti Lal*, for the appellant.

Dr. *Satish Chandar Banerji*, for the respondent.

KNOX and BLAIR, JJ.—The proceedings out of which this appeal has arisen derived their origin from a suit which was instituted in a Rent Court. In that Court the husband of Musammat Gomti Kunwar, who is now defendant and appellant before us, sued Gudri, the plaintiff in the Court of first instance and respondent before us, for the rent of certain land. In support of the claim for rent the husband of Musammat Gomti Kunwar filed a counterpart, which he alleged had been executed in his favour by Gudri. Gudri denied the execution of the counterpart. The Rent Court went into the question thus raised, and determined the point in favour of the husband of Musammat Gomti Kunwar. The matter was carried on in appeal as far as it could be; but in all the Courts the decision arrived at was that the counterpart was valid, and had been executed by Gudri in favour of the husband of Musammat Gomti Kunwar. Having failed in the Rent Courts, Gudri instituted a suit in the Civil Court, and asked for a declaration to the effect that the counterpart was not executed by him, and was not a genuine document. The Court of first instance dismissed his claim on the ground that the particular issue, having been heard and determined by the Rent Court, was *res judicata*, and the Civil Court was debarred from trying it. In appeal the learned Judge held that the decision of the Rent Courts upon this issue must be taken to be a decision on an incidental issue, and one that could not operate as *res judicata*.

(1) (1902) 6 C. W. N., 825.

(2) Weekly Notes, 1901, p. 49.

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He accordingly set aside the decision of the Court of first instance, and remanded the suit under section 562 of the Code of Civil Procedure. It is from that order of remand that the present appeal has been filed.

The pleas taken in the memorandum of appeal, and the arguments addressed to us, impugn the decision of the appellate Court. The issue, it is contended, was not an incidental issue, but an issue upon a material point necessary for the proper decision of the suit in the Rent Courts. Further, it was contended that if section 13 of the Code of Civil Procedure did not operate as bar, the principle contained in section 13 was powerful enough, and should be applied. Further argument is addressed to us to the effect that, though the decree asked for is a declaratory decree, the real object of the plaintiff was to reagitate a question which had been heard and finally determined in the Rent Courts, and that such a decree, if granted, could have no beneficial effect. On these grounds we are asked to hold that the relief asked for was of such a nature as should not be granted.

Reliance was placed on the case of *Rai Krishn Chand v. Mahadeo Singh* (1). We have examined this precedent. What was held there was, that a Civil Court should not make a declaration that the compromise of proceedings in the Revenue Court, upon which the Revenue Court had made a decree or order, was illegal or without authority. That question is very different from the one before us, and it is sufficient to say with regard to that precedent that it can be no guide to the issue which we have to decide. The compromise was intended by the parties to be, and did merge into, a decree, and may practically be looked upon as a decree of the Rent Court.

The real point that we have to see, first, in this case is whether section 13 does or does not prevent a Civil Court from trying the issue which has been raised before it. In considering this we have to ask ourselves the further question, was the Rent Court which tried the issue in the first instance a Court of jurisdiction competent to try the present suit? The answer to this must be in the negative. A second Court, so far as

(1) *Weekly Notes*, 1901, p. 49.

this point is concerned, is only debarred from trying an issue which has been directly and substantially in issue in a former suit, and has been determined in the former suit when the Court which so heard and determined it was a Court of jurisdiction competent to try the subsequent suit. What we have just laid down is no new matter. It has come before their Lordships of the Privy Council in the case of *Gokul Mandar v. Pudmanund Singh* (1). Indeed the issue now before us may be said to be precisely the same as that which came before their Lordships in the case just quoted, for that case is of still further assistance to us, as their Lordships went on to observe "that the essence of a Code is to be exhaustive on the matters in respect of which it declares the law, and it is not the province of a Judge to disregard or go outside the letter of the enactment according to its true construction." This is precisely what we should be doing if we acceded to the argument we have heard to-day. We have the clear provisions of section 13, which are applicable to the Rent Courts, and outside this we do not propose to go. As regards the further point as to whether a declaratory decree should be given in the present case, we are prepared to follow the learned vakil in the view he takes that the decree will be of no value. We therefore dismiss the appeal with costs.

Appeal dismissed.

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Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.
MUNAWAR ALI (МУНАВАР) v. SHAKIRAT-UN-NISSA BIBI AND OTHERS
(APPLICANTS).*

1902
November 5.

Act No. XLIX of 1873 (N.-W. P Land Revenue Act), section 114—Partition—Order refusing to stay partition—Appeal—Jurisdiction of High Court.

Held that under section 114 of the North-Western Provinces Land Revenue Act, 1877, the High Court can only entertain appeals from orders and decisions whereby the rights of parties are declared. No power is given to the High Court to restrain the Collector or Assistant Collector from entertaining an application for perfect partition.

In this case *Musammat Shakirat-un-nissa Bibi and others*, as zamindars of some 11 annas odd of the village of Yunuspur,

* First Appeal No. 52 of 1900, from a decree of *Munshi Balmakund*, Assistant Collector of Jaunpur, dated the 17th January, 1900.