

the proceeding has come to my knowledge, I have dealt with it under section 439, sub-section (1) of the Code of Criminal Procedure. For the reasons set forth above I am of opinion that the Magistrate of the first class had jurisdiction to make the order which he did, and I direct that the record be returned.

1901

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 KING-  
EMPEROR  
v.  
MUKNA.
 

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 APPELLATE CIVIL.
 

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 1901  
November 7.
 

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Before Mr. Justice Know and Mr. Justice Blair.

NIADAR (DEFENDANT) v. BARU MAL AND OTHERS (PLAINTIFFS).\*

Act No. XII of 1881 (N.-W. P. Rent Act), sections 93, 95—Act No. XIX of 1873 (N.-W. P. Land Revenue Act), section 102—Jurisdiction—Civil and Revenue Courts—Suit to eject as a trespasser a person who claimed to be entitled to the holding of a deceased occupancy tenant—*Res judicata*.

Upon the death of an occupancy tenant, a person who alleged that he was entitled to succeed to the deceased's occupancy holding, obtained from the revenue authorities, by means of an application under section 102 of the N.-W. P. Land Revenue Act, mutation of names in his favour, and also got into possession of the holding. The zamindars thereupon brought a suit in a Civil Court for his ejection, on the allegation that he was a mere trespasser, who had no right whatever to succeed to the holding of their late occupancy tenant. Held that such suit was properly brought in a Civil Court, and could not have been instituted in a Court of Revenue, and the decision of the Revenue authorities allowing mutation of names in the defendant's favour could not operate as *res judicata* in respect of such suit. *Subarni v. Bhagwan Khan* (1) distinguished.

THE facts out of which this appeal arose were as follows. One Gulzara, an occupancy tenant, died in November 1899. Thereupon Niadar, the present appellant, applied to the revenue authorities under section 102 of Act No. XIX of 1873 for the entry of his name in respect of Gulzara's occupancy holding. An order was made for the entry of Niadar's name on the 11th of February, 1900, and he obtained possession of the holding. Upon this the zamindars brought a suit in the Civil Court to eject Niadar and recover possession of the holding on the ground that Niadar was a mere trespasser who had no right whatever to the land as the successor of Gulzara. The Court of first instance dismissed the suit, holding that it was not cognizable by a Civil

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\* Appeal No. 17 of 1901 under section 10 of the Letters Patent.

(1) (1896) I. L. R., 19 AL., 101.

1901

NIADAR  
v.  
BARU MAL.

Court, and the plaintiffs' appeal was dismissed by the lower appellate court on the same ground. The plaintiffs appealed to the High Court, and their appeal, coming before a single Judge of the Court, was decreed. (See I. L. R., 23 All., 360.) From this judgment the defendant appealed under section 10 of the Letters Patent.

Babu *Satya Chandar Mukerji*, for the appellant.

Pandit *Sundar Lal*, for the respondents.

KNOX and BLAIR, JJ.—The point which has been contended, and very earnestly contended, before us by the learned vakil for the appellant, is whether the suit out of which this appeal has arisen is, or is not, one governed by the precedent of *Subarni v. Bhagwan Khan* (1).

We agree with our brother Banerji that the present suit was not one governed by that precedent. In the present suit the application originally made to the Revenue Courts was an application on plain paper, headed and marked as being one under section 102 of Act No. XIX of 1873. No person was cited as a defendant: all that the application stated was, that the applicant had been in joint occupancy of an occupancy holding together with the deceased; that he had succeeded to the holding, and was in possession of it; that the patwari had wrongly refused to report the case for mutation of names, and prayed that mutation of names might be effected in his favour. There was, as is usual in these cases, a fringe of irrelevant matter tending to obscure the point in issue. The Revenue Court, however, dealt with it as an application under section 102, and passed its order under section 102. There was not, as in the case of *Subarni v. Bhagwan Khan*, any request to be put in possession of the occupancy holding: the law has not made any provision, as the learned vakil rightly admitted, whereby orders passed under section 102 of Act No. XIX of 1873 can be treated as judgments of a Civil Court. The case before us differs thus *toto cælo* from the case of *Subarni v. Bhagwan Khan*.

We dismiss this appeal with costs.

*Appeal dismissed.*