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of the lower appellate Court, and direct that the defendants respondents do pay to the plaintiff appellant the sum of Rs. 100 with interest at the rate of 6 per cent. per annum from this day to the day of payment, on or before the 1st of March 1904; and in default of payment we order that the right of the respondents to redeem the mortgaged property be foreclosed and the plaintiff appellant placed in possession thereof. We allow costs throughout to the appellant.

Appeal decreed.

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 November 27.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Burkitt.

RANI KISHORI (PLAINTIFF) v. RAJA RAM AND ANOTHER
 (DEFENDANTS).*

Res. judicata—Decision of question of title by a Court of Revenue.

The decision by a Court of Revenue of a question of title, though such decision was necessary for the disposal of the case before it, cannot prevent the same question being again litigated between the same parties in a Civil Court. *Debi Prasad v. Jafar Ali* (1), *Husain Shah v. Gopal Rai* (2), *Ajullia Prasad v. Sheodra* (3) and *Gomti Kuwar v. Gudri* (4) referred to. *Rai Krishn Chand v. Mahadeo Singh* (5) and *Subarni v. Bhagwan Khan* (6) distinguished.

THE facts of this case are as follows :—

On the 21st of July 1893 one Girdhari Lal mortgaged certain land to one Raja to secure an advance of Rs. 200. The mortgagee obtained a decree on his mortgage and caused the mortgaged property to be advertised for sale on the 20th of September 1900. The plaintiff Rani Kishori, within whose zamindari the land in dispute was situate, thereupon brought the suit out of which the present appeal arises asking for a declaration that the land was her property and not liable to be sold in execution of Raja Ram's decree. Her allegation was that the mortgagor Girdhari Lal was merely the tenant of a cultivatory holding in the village, that that holding did not consist of resumed muafi plots as alleged by the mortgagee,

* Second Appeal No. 873 of 1901, from a decree of Pandit Rajnath Sahib, Subordinate Judge of Mainpuri, dated the 13th of August 1901, reversing a decree of Khwaja Muhammad Abdul Ali, Munsif of Mainpuri, dated the 11th of February 1901.

(1) (1880) I. L., R., 3 All., 40.
 (2) (1879) I. L. R., 2 All., 428.
 (3) (1884) I. L. R., 6 All., 403.

(4) Weekly Notes, 1902, p. 220.
 (5) Weekly Notes, 1901, p. 49.
 (6) (1893) I. L. R., 19 All., 101.

and was not the property of Girdhari Lal. The mortgagor did not appear, but the mortgagee pleaded that the mortgaged land was resumed muafi the property of his mortgagor, and that the mortgagor had full authority to mortgage. The Court of first instance found in favour of the plaintiff, holding that the defendant Girdhari Lal had no proprietary interest in the land at the date of its mortgage to Raja Ram. On appeal by Raja Ram the lower appellate Court (Subordinate Judge of Mainpuri) reversed the decree of the Munsif and dismissed the suit on the finding that the land in dispute was the property of Girdhari Lal and that he was competent to mortgage it to the other defendant. The plaintiff thereupon appealed to the High Court.

Pandit *Sundar Lal*, Pandit *Moti Lal Nehru* and Munshi *Gokul Prasad*, for the appellant.

Mr. *Sarbadhicary*, Munshi *Ratan Chand* and Dr. *Satish Chandra Banerji*, for the respondents.

STANLEY, C. J., and BURKITT, J.—The suit out of which this appeal has arisen was instituted by the plaintiff appellant Rani Kishori against two persons Raja Ram and Girdhari Lal (the latter deceased being represented by his widow) for the purpose of obtaining a declaration that certain lands, situate within the ambit of her zamindari, which had been advertised for sale on the 20th of September 1900, were liable to be sold. The sale was one in execution of a decree obtained by the first defendant Raja Ram against the second defendant Girdhari Lal. That decree was passed on a mortgage, dated the 21st of July 1893, by which the defendant Girdhari Lal mortgaged the land in suit to Raja Ram to secure a sum of Rs. 200. The allegation of the plaintiff was that the mortgagor Girdhari Lal was merely the tenant of a cultivatory holding in the village, that that holding did not consist of resumed *muafi* plots as alleged for the mortgagor, and was not the property of Girdhari Lal. The plea raised in defence was that these plots were the property of the mortgagor and that they were resumed *muafi*, and that the mortgagor had full authority to mortgage. The defendant Girdhari Lal did not appear. The Court of first instance found in favour of the plaintiff, holding that the

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defendant Girdhari Lal had no proprietary interest in the land at the date of the mortgage in favour of Raja Ram.

On appeal this decision was reversed by the learned Subordinate Judge, who for reasons which commended themselves to him found that the land was the property of the defendant Girdhari Lal, and that he was competent to mortgage it to the other defendant.

On appeal here the learned advocate for the appellant relied upon the judgment and decree in a case dated the 29th of June 1896 passed in a Rent Court between the plaintiff, appellant here, and the defendant Girdhari Lal. The facts of that case were that the appellant Rani Kishori treating Girdhari Lal as her rent-paying tenant had distrained certain crops growing on land in his occupation on the allegation that rent was due from him. Under the procedure enjoined by the Rent Act, Girdhari Lal instituted a suit against Rani Kishori contesting her right to distrain the crops. The case set up by Girdhari Lal was that he was not a tenant of Rani Kishori, but was the owner of the lands on which the crops grew, those lands being his resumed *muafi* holding. The Deputy Collector being of opinion that the evidence produced by Girdhari Lal in support of his contention was quite insufficient, dismissed his suit, and we are informed that an appeal to the Collector was unsuccessful. The learned advocate for the appellant asks us to hold that the decision of the Rent Court in the case we have just mentioned ousted the jurisdiction of Civil Court to try again an issue which had been tried in that suit. He did not actually plead that decision as a *res judicata*, though he went very near a plea of that nature, and indeed it is to us somewhat difficult to understand what is the difference between the plea that the jurisdiction of the Civil Court was ousted by that decision and the plea that that decision is binding as *res judicata* on a Civil Court. They seem to be the same thing, only stated in different ways. That a question of title which has been decided in a Rent Court and which it was absolutely necessary for the Rent Court to decide before it could come to a decision between the parties to the case before it, may again be litigated in a Civil Court is undeniable and is supported

by a mass of authority in this and other High Courts. We would refer for instance to the cases of *Debi Prasad v. Jafar Ali* (1), *Husain Shah v. Gopal Rai* (2), *Ajudhia Prasad v. Sheodin* (3) and many other similar cases, including the recent case of *Gomti Kunwar v. Gudri* (4), as to the jurisdiction of a Civil Court being ousted otherwise than by the operation of the rule of *res judicata*. The learned advocate was not able to cite to us any case exactly on the point, that is to say, a case in which proprietary title to land having been decided in the Revenue Court, it was held that that decision must be followed in the Civil Court. Reliance was placed on the case of *Rai Krishn Chand v. Mahadeo Singh* (5). All that was laid down in that case was that a Civil Court will not interfere with a compromise duly entered into in a Revenue Court in a matter in which the Revenue Court had exclusive jurisdiction. Another case was cited, namely, the case of *Subarni v. Bhagwan Khan* (6). That also was a case in which the matter in issue was the succession to an occupancy holding. The occupancy tenants having died, a person alleging herself to be their daughter applied to the Revenue Court to be recognised as their daughter and to be declared entitled to and put into possession of the occupancy holding. The Revenue Courts found in her favour, and directed her to be recorded as occupancy tenant. It was held by the learned judges in that case that that was a question which could not be litigated in a Civil Court, and properly so, as the succession to an occupancy holding is a matter exclusively reserved for the decision of a Revenue Court. These were the only two cases on which the learned advocate relied. In our opinion they in no way support his contention that in a suit of a peculiarly civil nature such as a suit for a declaration of proprietary right an adverse decision on the question of title, even though necessarily passed in a Revenue Court, can be held to oust the jurisdiction of the Civil Court to decide that issue. This being the case, we see no reason whatever for interfering with the decree of the lower appellate Court. We dismiss the appeal with costs.

Appeal dismissed.

(1) (1880) I. L. R., 3 All., 40.

(2) (1879) I. L. R., 2 All., 428.

(3) (1884) I. L. R., 6 All., 405.

(4) Weekly Notes, 1902, p. 220.

(5) Weekly Notes, 1901, p. 43.

(6) (1893) I. L. R., 19 All., 101.