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may have been the case before 1871, from that date onwards there has been discontinuance of possession on the part of the original owner of the property and his representatives. There is no case here of a direct trust as between the owner of the property and the predecessor in title of the respondents. In our opinion the claim is barred by the provisions of article 142 of the second schedule to the Indian Limitation Act, 1877. The case is very much on all fours with a case which will be found reported in the Punjab Record of 1885, namely, the case of *Nihal Singh* v. *Dula Singh* (1). We dismiss the appeal with costs.

Appeal dismissed.

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

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ZAHUR ALI (PLAINTIFF) *v.* SHER ALI (DEFENDANT).*

Act (Local) No. II of 1901 *(Agra Tenancy Act), section* 193*—Procedure—Order remanding case to Court of first instance for retrial—Appeal.*

Held that no appeal lies from an order of an appellate Court in a suit under the Agra Tenancy Act, 1901, remanding the case to the Court of first instance for trial upon the merits.

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

Mr. *Muhammad Ishaq* and Munshi *Gulzari Lal*, for the appellant.

Dr. *Tej Bahadur Sapru*, (for whom Pandit *Mohan Lal Nehru*), for the respondent.

STANLEY, C.J. and BURKITT, J.—These are two appeals by the plaintiff appellant against appellate orders of the District Judge of Farrukhabad passed on two appeals instituted in the Court of the learned District Judge by the present defendant appellant against two appellate decrees of the Collector in favour of the plaintiff in a rent suit.

The suit was instituted by the plaintiff in the Court of an Assistant Collector of the 2nd class to recover a certain amount as rent claimed to be due from the defendant on the allegation

* First Appeal No. 70 of 1905, from an order of H. W. Lyle, Esq., District Judge of Farrukhabad, dated the 11th of April 1905.

(1) Panj. Rec., 1885, C. J. No. 38, p. 71.

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that the defendant was tenant of certain land and that the rent claimed was due and unpaid.

In his defence the defendant set up the plea (to use the words of the District Judge in appeal) that "he had nothing to do with the land himself, but that his wife and sister-in-law were the proprietors of it."

The Court of first instance held that the defendant was tenant of the land (he being so recorded in the settlement papers), and gave plaintiff a decree, but for a smaller sum than that claimed.

Both parties appealed to the Collector, who on the defendant's appeal affirmed the finding of the Court of first instance as to the existence of the relationship of landlord and tenant between the parties and dismissed the appeal. On the plaintiff's appeal he modified the decree of the first Court by giving plaintiff a decree for the full amount claimed. The defendant appealed to the District Court against both these decrees.

In the memorandum of appeal in each case he contended that the lower Court should either have "under the new law ordered under section 199 to have the proprietary rights determined by the Civil Court or should have determined the question of title itself like the Civil Court."

There were also other pleas on the merits which it is not necessary to notice. It is not easy to understand how on the pleadings either section 199 or 202 of the new Rent Act is applicable. As to section 199 the defendant had not pleaded that he had any proprietary right in the land the rent of which was in question. His plea, as mentioned above, was that he "had nothing to do" with the land, the proprietors of which, he alleged, were his wife and sister-in-law. Section 202 has reference only to a suit instituted in a Civil Court. This suit was instituted in a Revenue Court.

The learned District Judge in his appellate judgment points out that the Assistant Collector had not made the wife and sister-in-law of the defendant parties to the suit, and had decided the question of title against the defendant, though the latter had disclaimed any title in himself. The learned Judge "gathers" that the lower Courts did not intend to decide "the question

of title under section 199." But, as pointed out above, no such question could have been raised on the pleadings. He then refers to a plea raised by the respondent that, as no question of title was decided by the lower appellate Court, no appeal lay to the District Court, and on consideration came to the conclusion that an appeal did lie. Eventually, holding that there had been no trial on the merits of the issue as to the title of the two ladies, the learned Judge set aside the decrees of the two lower Courts and remanded the suit for re-trial to the Court of first instance with directions to re-hear it after making the two ladies parties to it.

Hence these two appeals by the plaintiff to this Court which are entitled "First Appeals from Orders." Among other pleas the appellant contends that no appeal lay to the District Judge from the Collector's decree. For the respondent it is objected that no appeal lies to this Court.

On consideration we are of opinion that the respondent's objection must be allowed. The order passed by the District Judge remanding the suit for re-trial with certain directions clearly does not amount to a "decree" as defined in the Code of Civil Procedure, section 2. It cannot be held to be more than an "order," which, had it been passed in a civil suit, would have probably been appealable to this Court under section 588 of the Code of Civil Procedure. But section 588 does not apply to proceedings in rent suits under the new Rent Act. By section 193 of that Act it is expressly provided that the Chapter (XLIII) of the Code of Civil Procedure in which section 588 is to be found shall not apply to any suit or proceeding under the Act.

Therefore, if the orders under appeal were passed under section 562, no appeal would lie to this Court. Apparently the learned District Judge, citing a case decided on section 202 of the Act, and applying, as he says, the same principle to section 199, considers that he has not passed an order under section 562. If that be the case, it is difficult to see what authority the learned judge had to pass the orders under appeal. But, be that as it may, it is in our opinion clear that as the Statute has given us no jurisdiction to entertain an appeal from an

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"order" passed in an appellate proceeding under the new Rent Act, we have no jurisdiction to entertain these appeals. We have no inherent appellate jurisdiction in rent suits outside the power given us by the Statute. Therefore, whether the orders under appeal were passed under section 562 or not, and whether those orders be right or not, as to which we do not desire to express any opinion, we must dismiss both appeals. We order accordingly. We make no order as to costs.

[*Cf. Vilayat Husen* v. *Maharaja Mahendra Chandra Nandi*, (1).]

Appeal dismissed.

1905
November 15.

Before Mr. Justice Banerji and Mr. Justice Richards.

JANKI AND OTHERS (DEFENDANTS) *v.* RAM PARTAP SINGH (PLAINTIFF).*

Pre-emption—Wajib-ul-arz—Construction of document—Partition of village into separate mahals.

In a village which consisted of two pattis or mahals the wajib-ul-arz recorded a custom of pre-emption to the effect that in the case of a sale or mortgage by a shareholder a claim for pre-emption might be brought by (1) own brothers and nephews, (2) cousins who are co-sharers, (3) co-sharers in the patti, and (4) shareholders in the village (*hissadaran deh*). The village was subsequently divided into more mahals; but no new wajib-ul-arz was framed. *Held* that a co-sharer in the village had a right of pre-emption as against a stranger, even though he did not own a share in the mahal in which the property sold was situate. *Dalganjan Singh* v. *Kalka Singh* (2) referred to.

THIS appeal arose out of a suit for the recovery of possession of certain zamindari property by right of pre-emption. The suit was based upon the terms of a wajib-ul-arz of 1873, which recorded a custom of pre-emption as obtaining in the village in favour of four classes of persons, one comprising shareholders in the village (*hissadaran deh*). The plaintiff was a shareholder in the village, but not in the mahals in which the property sold was situate except for a small share in one of them. The defendants vendees were strangers. It appears that prior to 1873 the village had been separated into two pattis or mahals,

* Second Appeal No. 1106 of 1903, from a decree of Maulvi Muhammad Hashmat-ullah, District Judge of Mainpuri, dated the 22nd of June, 1903, modifying a decree of Pandit Raj Nath Sahib, Subordinate Judge of Mainpuri, dated the 14th of May, 1902.

(1) *Supra*, p. 88. (2) (1899) I. L. R., 22 All., 1.