

Knowledge of the presence in the house of the stolen property having been established against Budh Lal, he must, as the house-master, be presumed to have been in possession of it. *Queen-Empress v. Sangam Lal* (1) is an authority for this proposition.

The learned counsel for the petitioner has addressed me on the question of sentence. This is no doubt a very serious offence, and it is aggravated by the fact that Budh Lal is in affluent circumstances, and apparently doing a good business, but I take into consideration the fact that a sentence of imprisonment will mean a great deal more to a man in his position than to the ordinary criminal. Under the circumstances I think a sentence of one year would meet the ends of justice. I accordingly alter the sentence from one of 18 months to one of one year's rigorous imprisonment. The conviction stands. Subject to this modification the appeal is dismissed.

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 v.  
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## APPELLATE CIVIL.

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*Before Mr Justice Griffin.*

BIHARI AND ANOTHER (PLAINTIFFS) v. SHEOBALAK (DEFENDANT).\*

*Act (Local) No. II of 1901 (Agra Tenancy Act) section 199—Suit for ejection in Revenue Court—Omission on part of defendant to plead title in himself—Res judicata.*

In a suit for ejection under Act No. II of 1901 the defendants did not plead their own title to the plot in suit, and in fact did not oppose the suit for ejection. *Held* that a subsequent suit brought in a Civil Court by the then defendants for proprietary possession of the same plot was barred by the principle of *res judicata*. *Rani Kishori v. Raja Ram* (2), *Ashraf-un-nissa v. Ali Ahmad* (3) and *Inayat Ali Khan v. Murad Ali Khan* (4) distinguished. *Sabig Dube v. Dooki Dube* (5) and *Beni Pande v. Raja Kausal Kishore Prasad Mal Bahadur* (6) referred to. *Gokul Mandar v. Pudmanund Singh* (7) discussed.

THIS was a suit for proprietary possession of a plot of land.

The plaintiffs alleged that they and the defendant were members of one family; that on a partition the plot in question had

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\* Second Appeal No. 369 of 1906, from a decree of Babu Bepin Behari Mukerji, Judge of the Court of Small Causes, Cawnpore, with powers of the Subordinate Judge, dated the 12th of February 1906, reversing a decree of Babu Birj Behari Lal, Munsif of Akbarpur, dated the 12th of June 1905.

(1) (1893) I. L. R., 15 All., 129,  
at p. 131.

(2) Weekly Notes, 1904, p. 109.

(3) Weekly Notes, 1904, p. 141.

(4) (1905) I. L. R., 27 All., 569.

(5) Weekly Notes, 1907, p. 1.

(6) (1907) I. L. R., 29 All., 160.

(7) (1902) I. L. R., 29 Calc., 707.

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been assigned to the plaintiffs' share, and that in July 1904 they had applied for mutation of names in respect of this plot, but their application had been rejected. The defendant pleaded his own title, and also that the suit was not maintainable in view of the fact that on the 4th of November 1904 he had obtained a decree from a Revenue Court for ejectment of the plaintiffs as his tenants of the plot in suit. The Court of first instance (Munsif of Akbarpur) decreed the claim. On appeal the lower appellate Court (Small Cause Court Judge of Cawnpore, with powers of a Subordinate Judge) reversed the decree of the Munsif and dismissed the suit. That Court found that in the ejectment suit the present plaintiffs (then defendants) did not plead their own title to the plot in suit, and in fact did not defend the suit at all, and held that by reason of this omission the plaintiff were precluded from maintaining the present suit. The plaintiffs appealed to the High Court.

Munshi *Gulzari Lal*, for the appellants.

Munshi *Gobind Prasad*, for the respondent.

GRIFFIN, J.—The plaintiffs sued for proprietary possession of plot No. 916 on the allegation that they and defendant were members of one family; that on a partition the plot in suit was assigned to the plaintiffs' share; that in July 1904 they applied for mutation of names in respect of this plot, but their application was rejected. The defendant pleaded his own title and also that the present suit was not maintainable, in view of the fact that on the 4th of November 1904 he had obtained a decree from a Revenue Court for the ejectment of the plaintiffs as his tenants of the plot in suit. It is found by the lower Court that in the ejectment suit the defendants did not plead their own title to the plot in suit, and in fact they did not oppose the suit for ejectment. The learned Subordinate Judge has held that as the plaintiffs omitted to set up their title in a former suit, they are now precluded from maintaining the suit. In second appeal it is strenuously contended on behalf of the plaintiffs appellants that the provisions of section 13 of the Code of Civil Procedure are not applicable to the present case, inasmuch as the Revenue Court which decided the ejectment suit had not jurisdiction to try the present suit for title, and it is pointed out that in the ejectment suit no question of title was raised, and it is urged that the provisions of

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section 199 of the Tenancy Act do not apply. I have been referred to the following rulings :—*Rani Kishori v. Raja Ram* (1) and *Ashraf-un-nissa v. Ali Ahmad* (2). These rulings were passed upon cases under Act XII of 1881. A comparison of section 199 of the Tenancy Act with section 208(a) of Act XII of 1881 shows that there has been an important alteration in the law, inasmuch as under the Tenancy Act a Revenue Court is empowered to determine a question of title in cases where the defendant pleads he is not a tenant. In view of this change in the law, I cannot regard the rulings just quoted as entirely applicable to the present state of things. Similarly in *Inayat Ali Khan v. Murad Ali Khan* (3) the decision which it was said operated as *res judicata* had been also passed under the former Act No. XII of 1881. In *Salig Dube v. Deoki Dube* (4) which was under the present Tenancy Act of 1901, the defendants pleaded that they were not tenants, but had proprietary rights in the land. The Revenue Court under the provisions of section 199 of the Act determined the issues thus raised itself, and decided as to one of the defendants, that he was a tenant of the plaintiffs; and this decision became final. It was held that the decision of the Revenue Court was a bar to the institution by this defendant of a suit in a Civil Court claiming to recover possession of the same land as proprietor. The principle of this decision was followed in another case decided by the same Bench of this Court, namely, *Beni Pande v. Raja Kausal Kishore Prasad Mal Bahadur* (5). The present case is distinguishable from these latter reported cases, inasmuch as the then defendants omitted to raise any plea in the Revenue Court that they were owners, not the tenants, of the plot in suit. The question for decision therefore is, have they by their omission to plead their proprietary title in the suit for ejectment precluded themselves from suing in the Civil Court to establish their proprietary title? For the appellants it is contended on the authority of the Privy Council ruling in *Gokul Mandar v. Pudmanund Singh* (6) that the provisions of section 13 of the Code of Civil Procedure must be strictly construed. The passage in their Lordships' judgment to

(1) Weekly Notes, 1904, p. 109.

(2) Weekly Notes, 1904, p. 141.

(3) (1905) I. L. R., 27 All., 569.

(4) Weekly Notes, 1907, p. 1.

(5) (1907) I. L. R., 29 All., 16.

(6) (1902) I. L. R., 29 Cal., 707.

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which I have been particularly referred to occurs at page 715. I need only observe that the remarks of their Lordships were *obiter*. I am unable to infer from these observations that their Lordships, if dealing with a case under the Tenancy Act, would hold that the decision of a Revenue Court under section 199 of the Tenancy Act could not operate as *res judicata*. The claim which the plaintiffs now make, that they are owners of the plot in suit, is clearly a plea which might and ought to have been raised by them in their defence to the ejectment suit. If they had raised that plea, the Revenue Court might under the provisions of section 199 of the Tenancy Act, have determined the question itself or required the defendant to institute a suit for determination of the question of title. In my opinion the learned Subordinate Judge was right in holding that the present suit was not maintainable. I dismiss this appeal with costs.

*Appeal dismissed.*

*Before Mr. Justice Banerji and Mr. Justice Akman.*

NATHI MAL AND ANOTHER (PLAINTIFFS) v. TEJ SINGH AND OTHERS  
(DEFENDANTS).\*

*Act (Local) No. III of 1901 (United Provinces Land Revenue Act), sections 110, 111 and 233(b)—Partition—Objections not raised before Revenue Court—Suit in Civil Court for declaration of title—Jurisdiction.*

On the 12th of March 1904 defendants applied to the Revenue Court for partition of their share in two mahals. Proclamation was issued on that application calling upon the opposite party to appear on the 18th of April 1904 and state their objections, if any, to the partition. The opposite party did not appear in the Revenue Court, but on the 20th of April 1904 instituted a suit in a Civil Court against the applicants for partition asking for a declaration of their exclusive possession over part of the property, the subject matter of the defendants' application for partition in the Revenue Court. *Held* that the plaintiffs' suit was not maintainable. *Muhammad Sadiq v. Lawte Ram* (1) and *Khasay v. Jugla* (2) referred to.

THE facts of this case are as follows:—

In the village of Khera Buzurg there were two mahals, one known as mahal Naubat Singh and the other as mahal Ganga Bakhsh. In the record of rights of both the mahals the plaintiffs were recorded as owing 5 biswas in each mahal, the other 5 biswas

\* First Appeal No. 255 of 1904, from a decree of Maulvi Maula Bakhsh, Additional Subordinate Judge of Aligarh, dated the 29th of June 1904.

(1) (1901) I. L. R., 23 All., 201. (2) (1906) I. L. R., 28 All., 432.