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August 15.

*Before Sir Stanley, Knight, Chief Justice, and Mr. Justice Sir George Knox.*  
ACHHEY LAL (DEFENDANT) v. JANKI PRASAD AND ANOTHER  
(PLAINTIFFS).\*

*Act (Local) No. II of 1901 (Agra Tenancy Act), section 32—Occupancy holding—Jurisdiction—Civil and Revenue Courts.*

Where plaintiffs sued in a Civil Court for possession under an agreement of part of an occupancy holding: *Held* that the suit would not lie, being contrary to the intention of section 32 of the Agra Tenancy Act, 1901.

THIS was a suit for recovery of possession of, amongst other cultivatory holdings, a moiety of some land situate in mauza Dunetia in the district of Muttra, of which the plaintiffs complained that they had been wrongfully dispossessed by the defendants. The plaintiffs and the defendants were descendants of one Nawal Kishore and were closely related, and the claim was based upon an agreement of the 16th of May 1894, under which the property of which the plaintiffs were joint owners was divided. The Court of first instance (Subordinate Judge of Agra) dismissed the claim upon the ground that the suit was not cognizable by a Civil Court in view of the provisions of section 32 of the Agra Tenancy Act, 1901. On appeal the District Judge modified the decree of the Court of first instance and gave a decree to the plaintiffs for possession as mortgagees of one-half of the holding in mauza Dunetia. Against this decree the defendant Achhey Lal, who was recorded as sole mortgagee of these holdings, appealed to the High Court.

Babu Mohan Lal Sundal, for the appellant.

Babu Satya Chandra Mukerji, (for whom Babu Situl Prasad Ghose), for the respondents.

STANLEY, C.J., and KNOX, J.—In the suit out of which this appeal has arisen the plaintiffs respondents claimed a decree for possession of, amongst other cultivatory lands, a moiety of land situate in mauza Dunetia in the district of Muttra, of which they complained that they had been wrongfully dispossessed by the defendants. The plaintiffs and the defendants are the descendants of one Nawal Kishore and are closely related, and the claim is based upon an agreement of the 16th of May 1894,

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\*Second Appeal No. 21 of 1905 from a decree of H. Warburton, Esq., District Judge of Agra, dated the 28th of September 1904, modifying a decree of Babu Raj Nath Prasad, Subordinate Judge of Agra, dated the 30th of June 1904.

under which the property of which they were joint owners was divided. The Court of first instance dismissed the claim on the ground that the suit was not cognizable by a Civil Court in view of the provisions of section 32 of the North-Western Provinces Tenancy Act, Act No. II of 1901. On appeal the learned District Judge modified the decree of the Court below and gave a decree to the plaintiffs for possession, as mortgagees of one-half of the holdings in mauza Dunetia. Of these holdings the appellant, Achhey Lal, is recorded as the sole mortgagee. Against this decree the present appeal has been preferred.

The holding in question is an occupancy holding, and the only interest which the parties or any of them have in it is a mortgage right. The learned District Judge in his judgment observes that "the lower Court has treated the suit as one for the division of holdings and has dismissed it as such under section 32 of Act II of 1901." He then says:—"I do not think this view is correct. In no case is it proposed to divide a holding. All the holdings are let to sub-tenants and the agreement is in effect merely that the rents of the holdings shall be collected in varying proportions by the parties to it. Nor is it a suit to divide the rents of holdings, but a suit to give effect to a certain agreement as to division which is a very different thing." We are unable to agree in the view of the learned District Judge. We think that the suit is one within the purview of section 32 and is not cognizable by a Civil Court. The Court is asked to declare that the plaintiff is entitled to an undivided share of an occupancy holding and to put him into possession of that share. To the agreement which forms the basis of the claim the landholder was no party. Section 32 (1) prescribes that "no division of a holding or distribution of the rent payable in respect thereof made by the co-sharers therein shall be binding on the landholder unless it is made with his consent;" and paragraph (2) of that section declares that "no suit or other proceeding for the division of a holding or distribution of the rent thereof shall be entertained in any Civil or Revenue Court." Neither a Civil or Revenue Court can therefore partition or divide an occupancy holding. Such partition or division can only be effected out of Court with

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the consent of the landholder. What the Court is asked to do in this case is to declare that the plaintiffs, who at the best are joint owners of an occupancy holding, have a legal right to a definite share in such holding and to put them into possession of that share. This is in effect to declare that a division of a holding without the consent of the landholder is binding and enforceable. The section appears to us expressly to forbid this. We may add that if a Court is not permitted to entertain a suit for the division of a holding and cannot therefore divide the holding, it certainly, we think, ought not to attempt to adjudicate upon claims of joint tenants to be entitled to definite shares of such holding, and that too behind the back of the landholder. We may further point out that if the Court were at liberty to declare the rights of parties to separate parts or shares of an occupancy holding, great difficulty might be experienced in working out the provisions of section 22 of the Act in regard to the succession to tenancies. We think in view of the scope and object of the Tenancy Act that no restricted interpretation should be placed upon section 32. The Legislature has shown in unmistakable terms that the division of a holding should not be permitted save with the consent of the landholder, and that a Civil or Revenue Court should not entertain a suit or other proceeding which has the effect of causing any such division.

We therefore allow the appeal, set aside the decree of the lower appellate Court and restore the decree of the Court of first instance, dismissing the plaintiffs' claim with costs as therein provided. The plaintiffs respondents must pay the costs of this appeal and also the costs in the lower appellate Court. In view of our judgment in the appeal the objections fail and are dismissed.

*Appeal decreed.*