# APPELLATE CIVIL.

1908.
*June* 12.

*Before Mr. Justice Banerji and Mr. Justice Richards.*

BECHAN SINGH (DEFENDANT) *v.* KARAN SINGH (PLAINTIFF).*

*Act (Local) No. II of* 1901 *(Agra Tenancy Act), section* 201—*Act No. I of* 1872 *(Indian Evidence Act), section* 4—*Evidence—Presumption—Record of plaintiff's name as a co-sharer.*

*Held* on a construction of section 201 of the Agra Tenancy Act, 1901, that the words "if in any suit instituted under the provisions of Chapter XI . . . . the plaintiff is recorded as having such proprietary right, the Court shall presume that he has it" mean that, so far as the Revenue Court is concerned, such Court is bound to presume in favour of the plaintiff, and it is for the defendant "to establish by suit in the Civil Court that the plaintiff has no such proprietary right." *Dhanka* v. *Umrao Singh* (1) and *Dil Kunwar* v. *Udai Ram* (2) dissented from. The judgment of Richards, J., in *Dhanka* v. *Umrao Singh* (3) followed. *Banwari Lal* v. *Niadar* (4) explained.

THE plaintiff in this case sued as mortgagee of a 2½ biswa share in mauza Larhapur, pargana Imratpur, to recover from the defendant, the lambardar of the village, his share of profits for the years 1309, 1310 and 1311 Fasli. The plaintiff was recorded in the khewat as mortgagee. The defendant resisted the suit upon various grounds, but mainly upon the ground that the plaintiff was not, and had not been for more than 12 years before suit, in possession of the share in question, and that the defendant was in adverse proprietary possession. The Court of first instance (Assistant Collector of the first class) gave the plaintiff a decree. The defendant appealed. The District Judge dismissed the appeal, holding that, according to section 201 of the Agra Tenancy Act, 1901, the Revenue Court was bound to presume in favour of the plaintiff's title, leaving to the defendant his remedy in the Civil Court. The defendant thereupon appealed to the High Court.

Babu *Surendra Nath Sen*, for the appellant.

Munshi *Gulzari Lal*, for the respondent.

BANERJI, J.—This appeal arises in a suit for profits brought against the lambardar by the mortgagee of a recorded co-sharer. The name of the plaintiff is also recorded in the revenue papers.

*Second appeal No. 1100 of 1905 from a decree of H. W. Lyle, District Judge of Farrukhabad, dated the 1st of August 1905, confirming a decree of Avadh Behari Lal, Assistant Collector of Farrukhabad, dated the 17th of May 1905.

(1) (1907) I. L. R., 30 All., 58.
(2) (1906) I. L. R., 29 All., 148.
(3) Weekly Notes, 1907, p. 43.
(4) (1906) I. L. R., 29 All., 158.

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The claim was resisted on the ground that the plaintiff had no proprietary right and that the defendant was in adverse proprietary possession. The Court of first instance decreed the claim in part and this decree has been affirmed by the lower appellate Court. The learned Judge was of opinion that, having regard to section 201, sub-section (3), of the Agra Tenancy Act, the Court could not go behind the entry in the revenue record and was not competent to try the question of proprietary right raised on behalf of the defendant. The correctness of this decision is impugned in this appeal. Section 201 of the Agra Tenancy Act provides for suits for profits brought by two descriptions of plaintiffs : (1) those whose names are not recorded as having the proprietary right entitling them to bring the suit, and (2) those whose names are so recorded. As regards the first class of persons the section provides that the Court shall proceed in the manner directed in section 199, that is to say, it may either require the plaintiff to institute a suit in the Civil Court to establish his right or it may determine the question of title itself, constituting itself for that purpose a Civil Court, the defeated party having a right of appeal to the District Judge or the High Court as the case may be. In the case of a plaintiff whose name is recorded, the section provides that the Court shall presume that he has such right. But it further provides that in such a case a suit may be brought in the Civil Court to establish that the *plaintiff* has not such proprietary right. It is thus clear from the proviso that if the plaintiff is a person whose name is recorded in the revenue papers it is for the defendant to bring a suit in the Civil Court to have it established that the plaintiff has no such right. It seems to me that the object of the section is that when the name of the plaintiff is recorded in the revenue papers, the Court is bound to presume that he has the right to sue, and the entry of his name should be regarded as sufficient proof and the Court should not go behind it in order to determine the question of the plaintiff's proprietary title, the remedy of the defendant being a civil suit. If the defendant can disprove the plaintiff's title in the Revenue Court and that Court can try the question of title, the proviso is superfluous. Under sections 44 and 57 of the Land Revenue Act (No. III of 1901) an entry in the revenue

registers and in the record of rights is *primâ facie* evidence of what it records, and any one disputing it has the right to sue in the Civil Court to establish his right. Those sections would give to the defendant all the remedy that he might be entitled to, and therefore the whole of clause (3), including the proviso, would be unnecessary and superfluous. Any other view would lead to anomalies. If the plaintiff's name is not recorded, the Revenue Court has the option of not trying the question of title and may refer the plaintiff to the Civil Court. But, according to the contention of the appellant, if the name of the plaintiff is recorded, the Revenue Court has no option, but must try the question of title. Again, if the decision of that question by the Revenue Court is adverse to the plaintiff, he has under the proviso no right of suit in the Civil Court. So that the defendant has two remedies open to him, whilst the plaintiff has only one. Surely that could not have been the intention of the Legislature. It is contended that the words 'shall presume' in section 201, sub-section (3), must be read as having the same meaning which is given to those words in the Evidence Act. In my judgment that was not the intention of the Legislature, because we find that in the Tenancy Act and in the cognate Act No. III of 1901 where the Legislature intends any entry to be *primâ facie* evidence of what it records, it uses the words "until the contrary is proved." I may refer to section 108, sub-section (2) of the Tenancy Act and sections 44, 57 and 84 of the Land Revenue Act. It is true that in section 9 of the Tenancy Act, it is provided that certain entries shall be conclusive proof of a person being a permanent tenure-holder or a fixed rate tenant or not as the case may be, but it must be borne in mind that the two Acts were not drawn up with as much care and precision as they should have been. Furthermore, it seems to me that in section 201, sub-section (3), it could not be declared that the record of the plaintiff's name should for all purposes be conclusive proof of the plaintiff's title, because the proviso to that very section enables the defendant to bring a suit in the Civil Court to have the question of title tried and the correctness of the entry tested. Therefore when in sub-section (3) the Legislature provided that if the plaintiff is recorded as having the right, the Court should

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presume that he has it and should leave it to the defendant to have the question of title tried in a Civil Court, the object of the Legislature was clearly to declare that for the purposes of the suit in the Revenue Court the entry should be regarded as sufficient proof and the Court should not go behind it. That such was the intention would be abundantly manifest if it were permissible to us to refer to the report of the Select Committee on the Bill which afterwards became Act No. II of 1901. Apart, however, from this, the whole context of the section and the policy of the Act lead, in my opinion, to only one conclusion, namely, that the Revenue Court should not go behind the entry. In the case of a person whose name is not recorded, the Act provides that the question of his title should be tried by only one Court, namely, either by the Civil Court or the Revenue Court, which may constitute itself a Civil Court. I fail to see why in the case of a plaintiff whose name is recorded two remedies should have been given to his opponent, namely, a remedy of trial by the Revenue Court and a suit in the Civil Court. In the suit in the Civil Court the decision in the Revenue Court will be nugatory and of no value. Such certainly could not have been the intention of the Legislature. The view I have expressed above was held by my brother Richards and myself in the case of *Niaz Ali Khan* v. *Govind Ram* (F. A. f. O. No. 70 of 1904, decided on the 22nd of May 1905).* The same view was taken by my brother Richards in his dissentient judgment in the case of *Dhanka* v. *Umrao Singh* (1) and recently by Mr. Justice Karamat Husain in *Har Prasad* v. *Syed Muhammad Baqar*

*The judgment in this case was as follows :—

BANERJI and RICHARDS, JJ.—This was a suit for profits by a person who is recorded as having the proprietary right entitling him to claim profits. Under sub-section (3) of section 201 of the Tenancy Act of 1901 the Court shall presume that such a person has a proprietary right. The defendant is competent to sue in a Civil Court under the proviso to that sub-section to establish that the plaintiff has not the proprietary right claimed by him. The Court below was therefore right in remanding the case to the Court of first instance, and we dismiss this appeal with costs.

(1) Weekly Notes., 1907, p. 48.

(S. A., No. 152 of 1907, decided on the 21st of April 1908).* The opposite view was held by Mr. Justice Knox in *Dil Kunwar* v. *Udai Ram* (1) and also in his judgment in *Dhanki* v. *Umrao Singh*. In the same case it was held in appeal under the Letters Patent (2) that the presumption enjoined by section 201 is not conclusive, but may be rebutted by evidence offered to the contrary. With great respect, I am unable to agree with the decisions in the cases in which the contrary has been held. It appears to me that in those cases the considerations to which I have referred above were not given due weight. In the case last mentioned there is no reference to the proviso to section 201, on which the decision of the question entirely depends. We have been referred to the case of *Banwari Lal* v. *Nadar* (3), to

* The judgment in this case was as follows:—

KARAMAT HUSAIN, J.—This was a suit instituted by Har Prasad and others under section 165 of the Agra Tenancy Act for their share of the profits for 1311 Fasli. The allegation in the plaint was that they were co-sharers in the mahal *gulabi* to the extent of two biswas out of 9 biswas, 10 biswansis, 8 kachwansis and 12 tanwansis. One of the pleas raised in defence by the defendants was that the extent of the share the profits of which were claimed was not correct. The Court of first instance found that the correct amount of the share was 1 biswa, 18 biswansis, 1 kachwansi and 18 tanwansis and gave a decree for the profits of that share. The plaintiffs appealed to the learned District Judge of Moradabad. The first ground of appeal to that Court was that the Court of first instance should have awarded profits in respect of 2 biswas against which the appellant's names were recorded. The learned District Judge affirmed the decree of the first Court, holding that the khewat on the face of it was incorrect. The plaintiffs come here in second appeal, and it is urged on their behalf that the entry in the khewat according to the provisions of section 201, sub-section (3), of Act No. II of 1901 is conclusive. This contention in my judgment is perfectly sound. Sub-section 3, section 201 is as follows:—"If the plaintiff is recorded as having such proprietary right, the Court shall presume that he has it." That being so, the Courts below had no power to go behind the entry in the khewat. I therefore decree the appeal, set aside the decrees of both the Courts below and remand the case under the provisions of section 562 of the Code of Civil Procedure to the Court of first instance through the Court of first appeal with directions to ascertain the amount of the profits on the basis that the plaintiffs are co-sharers of 2 biswas and to award that amount to them. Costs here and hitherto will abide the event.

(1) (1907) I. L. R., 29 All., 148. (2) (1907) I. L. R., 30 All., 58.
(3) (1907) I. L. R., 29 All., 158.

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which I was a party. In that case the District Judge had held that it was for the plaintiffs to show that they or their predecessors in title had within 12 years collected the profits. From this view we dissented, and we pointed out the provisions of section 201. No doubt in the judgment the following words occur:—"it was for the defendant to rebut the presumption the law raised in the plaintiff's favour." As regards this, I may observe that the question whether the presumption under section 201 was a rebuttable presumption or not was not discussed and this observation was only an *obiter dictum*. However, on full consideration I think it was erroneous. In my judgment the conclusion at which the Court below arrived is right. I would accordingly dismiss the appeal with costs.

RICHARDS, J.—The learned District Judge dismissed the appeal in the Court below on the ground that on the true construction of section 201, sub-section (3), of the Agra Tenancy Act, the plaintiff being recorded as having proprietary title was entitled to a decree. I entirely agree with the decision and reasons given by the learned District Judge. A difficulty, however, arises by reason of the fact that a contrary view was taken by a Bench of this Court in the case of *Dhanka* v. *Umrao Singh* (1). My learned colleague has referred to the various cases in which the construction of section 201 of the Act has been considered, and it seems to me that we are entitled, having regard to the conflict of authority, to consider the provisions of the section without feeling bound by any previous decisions. The case of *Dhanka* v. *Umrao Singh* was heard in the first instance by Knox, J. and myself. In the course of my judgment I gave at some length my reasons for holding that under the provisions of sub-section (3) of section 201 a Revenue Court could not go behind the entry in the khewat recording the plaintiff's proprietary title. The judgment is reported in the Weekly Notes, 1907, p. 43. I endeavoured to point out that if the Legislature intended that the entry should merely raise a *primâ facie* case in favour of the plaintiff, the whole sub-section was quite meaningless and superfluous. Sections 44 and 57 of the Revenue Act had already made entries of this nature *primâ facie* evidence, and it was

(1) (1907) I. L. R., 30 All., 58.

therefore entirely unnecessary to re-enact in section 201 of the Tenancy Act what was already abundantly provided for by a general section of the Revenue Act. I also pointed out how inconvenient such a construction would be having regard to the proviso to sub-section (3). I would, however, here like to correct an error in my judgment in the case. At p. 44 of the Report the following passage occurs:—'To hold otherwise necessarily involves the almost absurd result that the Revenue Court can decide the question of title against the plaintiff, and that notwithstanding such decision the same plaintiff can at once go to the Civil Court to try the same question over again." The word 'defendant' should be substituted for the word 'plaintiff' because it is quite clear that it is only the defendant who is entitled to go to the Civil Court and ask for a declaration that the plaintiff has no title. It seems to me that the very fact that it is the defendant and not the plaintiff who is entitled under the proviso to go to the Civil Court is the strongest possible argument in favour of the construction given to the section by the learned District Judge. As pointed out by my learned colleague in the course of the judgment he has just delivered, if the construction contended for by the appellant is to be given to the sub-section, the defendant is entitled to a complete trial of the question of title in the Revenue Court, and if the decision be against him he can have the same question retried in the Civil Court. Why is a plaintiff whose title is recorded not given the same right of going to the Civil Court? The answer is, I think, because, his title being recorded, the Revenue Court cannot decide the question of title against him and he has therefore no necessity to go to the Civil Court. I have not at all lost sight of the fact that the view that I take did not find favour with the Bench before whom the case of *Dhanka* v. *Umrao Singh* came in a Letters Patent Appeal. I have therefore reconsidered my judgment, and I have also very carefully considered the judgment of the Court hearing the appeal. It seems to me that the proviso to sub-section (3) altogether escaped the notice of the Court. None of the reasons I gave for arriving at the conclusion at which I did arrive are dealt with in the judgment of the Court. The learned Judges ask:—" Is there any

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grave reason for interpreting the words 'shall presume' as equivalent to the words 'shall conclusively presume'?" I think that there are grave reasons for holding that a Revenue Court, in suits instituted under the provisions of Chapter XI of the Act, should not go behind the record of the proprietary title of the plaintiff. The clear intention of the section itself is one reason which would be defeated by any other construction. The section provides the course the Court is to adopt—(1) in the case of a plaintiff who is not recorded, and (2) in the case of a plaintiff who is recorded. Sub-section (3) is without object or meaning if the Revenue Court is to go behind the entry, and renders two conflicting decisions possible. The learned Judges say:—"The question is by no means free from difficulty" and towards the end of the judgment "*on the whole* we see no reason for giving conclusiveness to a presumption where the Legislature has not in express terms done so." It seems to me that the learned Judges formed no very strong opinion contrary to the opinion that we took in the case of *Niaz Ali Khan* v. *Gobind Ram*, and which we still hold after further consideration. The decision seems to me to be based upon the definition of the words 'shall presume' in the Evidence Act. There is no similar definition in the Agra Tenancy Act. The whole object of section 201 of the latter Act and the proviso to sub-section (3) clearly show, I think, that the meaning given by express definition in the Evidence Act to the expression 'shall presume' cannot be given to the same words in section 201, sub-section (3), of the Tenancy Act. A perusal of the provisions of the Revenue Act clearly shows that it was the intention of the Legislature to make the records in the revenue registers and record of rights as accurate and as valuable as possible. Elaborate provisions are made for their preparation and correction, and it certainly is not unnatural to suppose that the Legislature intended by sub-section (3) that in a Revenue Court these records should be deemed conclusive in certain specified suits, namely, in suits instituted under the provisions of Chapter XI of the Act. The value and efficacy of these records will be much enhanced if pressure is brought to bear on persons entitled to proprietary rights to have such rights recorded. In section 108, sub-section (2), a receipt is made *primâ facie* evidence of an acquittance in full

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up to the date of the receipt. The words used are "it shall be presumed until the contrary is shown." Here we have an instance in which the same words in the same Act are qualified by the words "until the contrary is shown." Section 44 of the Land Revenue Act (passed the same day as the Tenancy Act) provides that the entries in the Annual Registers "shall be presumed to be true until the contrary is proved." Section 57 provides that all entries in Records of Rights "shall be presumed to be true until the contrary is shown." It cannot be said that where the Legislature intended the words 'shall presume' to create merely a *primâ facie* presumption it never said so. It is true that the expression 'conclusive proof' occurs in section 9. This section, however, refers to all Courts and not merely to a Revenue Court.

The point involved is one of great importance and of frequent occurrence. After full consideration I have no doubt but that the decision of the Court below was correct, and I also would dismiss the appeal with costs.

BY THE COURT.—The appeal is dismissed with costs.

*Appeal dismissed.*

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

1902
*April* 5.

CHEDA LAL AND ANOTHER (DEFENDANTS) *v.* GOBIND RAM (PLAINTIFF).*

*Will—Construction of document—"Money"—General personal estate.*

Where a testator after clearly indicating an intention to exclude entirely certain of his relations from succession to his property, proceeded to bequeathe his "money" to two legatees, with directions as to its disposal, it was *held* that the intention of the testator being apparently, from a perusal of the whole will, to bequeathe all his personal property to the legatees, it was not necessary to construe the term used in its strict limited signification, but the whole of the testator's personal estate passed. *Cadogan* v. *Palagi* (1) referred to.

THE suit out of which this appeal arose was instituted by Gobind Ram, the surviving brother of one Bhawani Das, who died on the 7th September 1898, to recover from the defendants Cheda Lal and Joti Prasad certain movable property which belonged to Bhawani Das at his death. The defendants claimed to be entitled to possession of the property in question under the

* First Appeal No. 110 of 1899 from a decree of Maula Bakhsh, Officiating Subordinate Judge of Bareilly, dated the 6th of April 1899.

(1) (1883) L. R., 25 Ch. D., 154.