

For these reasons we think that the lower appellate Court was wrong in reversing the decision of the learned Munsif. We therefore allow the appeal, set aside the decree of the lower appellate Court and restore the decree of the Court of first instance with costs in all Courts. We extend the time for payment of the mortgage debt up to the 1st of April next.

Appeal decreed

Before Mr. Justice Sir George Knox and Mr. Justice Aikman.

NIRANJAN (PLAINTIFF) v. GAJADHAR (DEFENDANT).*

Act (Local) No. II of 1901 (Agra Tenancy Act), section 177—Question of proprietary title—Jurisdiction—Civil and Revenue Courts.

Held that the question whether a tenant, defendant in a suit for ejectment, is a tenant of one kind or another is not a question of proprietary title within the meaning of section 177 of the Agra Tenancy Act, 1901. *Chhitar Singh v. Rup Singh* (1) dissented from.

THE facts of this case are as follows:—

Niranjan Ahir applied as owner of a fixed rate tenant's holding for ejectment of one Gajadhar from a small plot of land. Gajadhar pleaded that he was the fixed rate tenant entitled to the holding. The suit under section 58 of Act No. II of 1901 was tried by an Assistant Collector, who dismissed it. The plaintiff appealed to the Court of the District Judge upon the ground that a question of proprietary title, within the meaning of section 177 (e) of the Tenancy Act, had been in issue and was in issue in the appeal. The District Judge, however, being of opinion that no such question was involved, referred the case to the High Court under section 195 of the Tenancy Act in view of the decision in *Chhitar Singh v. Rup Singh* (Weekly Notes, 1906, p. 247).

Babu Parbati Churan Chatterji, for the respondent.

KNOX and AIKMAN, JJ.—On the facts stated by the learned District Judge of Jaunpur we hold that no question of proprietary title was in issue in the Court of first instance and that no such question is a matter in issue in this appeal. The learned District Judge is right therefore in his view that he had no

*Miscellaneous No. 268 of 1907 on a reference made by W. R. G. Moir, District Judge of Jaunpur, dated the 26th of July 1907, against the order of Rup Narain, Assistant Collector, First Class, of Jaunpur, dated the 27th of November 1906.

(1) Weekly Notes, 1906, p. 247.

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jurisdiction to entertain the appeal. The opposite view may perhaps derive some support from the observations made towards the conclusion of the judgment in *Chhitar Singh v. Rup Singh* (1), but, with all deference to the learned Judge who decided the case, we are unable to agree with him in holding that, when there is a question whether one party or the other is the cultivator of specified land, a question of proprietary title arises. This is our answer to the reference.

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January 18.

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

GANGA DEI (PLAINTIFF) v. BAI AM AND OTHERS (DEFENDANTS).^{*}
Land holder and tenant—Trees—Land holder's and tenant's rights as to trees on tenant's holding.

Held that as a general rule the property in timber growing on a tenant's holding vests in the zamindar, and the tenant has no right to cut and remove such timber. But as a general rule also the zamindar has no right to interfere with the enjoyment by his tenant of the trees upon his holding so long as the relation of landlord and tenant subsists. *Sheik Abdool Rohoman v. Dataram Bashes* (2) referred to.

THE plaintiff in this case sued as zamindar of a village called Kanchanpur praying for a declaration of her title to the trees growing on the cultivated and uncultivated lands of Kanchanpur in the possession of the defendants, who were her tenants, and also for a perpetual injunction prohibiting the defendants from offering any obstruction to the cutting down and removal by her of the trees on their holding. The defendants set up a right by custom to cut the trees in question, but this plea was rejected, and a declaration of title was given to the plaintiff as prayed for in her plaint. The Court of first instance (first Additional Munsif of Meerut) also granted the plaintiff the injunction prayed for, and this decree was upheld in appeal by the lower appellate Court (Additional District Judge of Meerut). The defendants appealed to the High Court, where, the case coming before a Single Judge of the Court, the only question argued was as to the right of the plaintiff to the injunction which she

^{*} Appeal No. 49 of 1907 under section 10 of the Letters Patent from a judgment of Richards, J., dated the 18th of April 1907.

(1) Weekly Notes, 1906, p. 247. (2) Weekly Reporter, January to July 1864, page 367.