

FULL BENCH.

1909.
January 14.

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

BHAWANI SINGH (DEFENDANT) v. DILAWAR KHAN, (PLAINTIFF.)*

Act (Local) No. II of 1901, (Agra Tenancy Act), section 201(3)—Presumption—Suit for profits in Revenue Court—Question of title decided by Civil Court.

In a suit for profits the defendants pleaded that the plaintiff had no title to certain plots. The Assistant Collector partially decreed the claim. The defendant thereafter and when an appeal was pending before the District Judge obtained a declaration of title to the plots from the Civil Courts. The lower Appellate Court held that without correction of the *khewat* the Civil Court's decree could not be given effect to in the Revenue Court.

Held that when as between parties to a revenue suit, a Civil Court of competent jurisdiction has decided the title to the property adversely to the plaintiff who claims profits, the Revenue Court is not competent to ignore that decision. *Durga Shanker v. Gur Charan* (1) followed.

THE facts of this case are as follows:—

The respondent instituted a suit for profits. The appellant pleaded that the plots for which profits were claimed had been wrongly included in plaintiff's *patti*. The Assistant Collector without framing an issue as to title partly decreed the claim. The plaintiff filed an appeal against the portion of the claim dismissed and the defendant preferred objections under section 561 of the Code of Civil Procedure 1882. In the meantime the defendant sued the plaintiff in the Civil Court for a declaration of title to the plots in question and obtained a decree. The lower courts in spite of this decree of the Civil Court repelled the defendant's contention holding that until the defendants got the village records corrected profits must be calculated on the recorded shares in the *khewat*. The defendant appealed to the High Court.

The appeal was referred to the Full Bench on the recommendation of Richards and Griffin, JJ.

Munshi *Gulzari Lal*, for the appellant, argued that in view of the decision of the Civil Court the plaintiff was not a co-sharer

*Second Appeal No. 857 of 1906, from a decree of Nawab Muhammad Ishaq Khan, District Judge of Farrukhabad, dated the 28th of June 1906, modifying a decree of Kuar Omkar Singh, Assistant Collector, 1st Class of Farrukhabad, dated the 10th of May 1905.

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

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in the plots in dispute. The Assistant Collector was bound to decide the issue raised by the defendant. Whatever meaning might be attached to the words "shall presume" in section 201 of the Agra Tenancy Act, the point could not be raised here as the defendant had already gone to the Civil Court and got a decree in his favour. The last proviso to that section did not say that the suit in Civil Court was to be brought after the decision in the profits case became final. It could be brought at any time, and the defendant brought the suit immediately after the decision of the first court. He referred to section 40 of the Land Revenue Act.

Dr. *Tej Bahadur Sapru*, for the respondent, argued that the plaintiff's name was still recorded as co-sharer, and the Revenue Courts being courts of special jurisdiction could not ignore the entry in the Revenue registers. If they did many sorts of difficulties might arise. The mere fact that a decision in favour of the defendant was passed by a Civil Court did not give the Revenue Court power to ignore the entry unless the person who obtained the decree got the entry corrected. He referred to sections 32 (1), and 33 of the Land Revenue Act. If the record of rights was in plaintiff's favour he would be entitled to a decree. If the defendant could rely on the decision of the Civil Court the provisions of section 33, Land Revenue Act, would become useless, as it would not be necessary for him to file any application under that section. He further submitted that under clause 3 of section 201, the presumption was absolute in spite of the decree of the Civil Court. The difficulty which has arisen in this case would be obviated if the person obtaining the decree of a Civil Court took the trouble of getting the entry in the Revenue register corrected.

The following judgments were delivered :—

KNOX, J.—The plaintiff respondent in this second appeal claims to be co-sharer to the extent of one half share in a *patti* which consists of 5 biswas in mahal Alaidapur. Mahal Alaidapur consists of two *pattis*, one the *patti* just mentioned above, and the second a *patti* of 15 biswas.

Upon plaintiff's instituting the suit, out of which this appeal arises, for his share of the profits which accrued due and payable

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on account of the years 1309 to 1311 *Fasli*, the defendant, now appellant, pleaded *inter alia* that certain plots which originally formed part of the 15 biswa *patti*, had been wrongly included in the 5 biswa *patti*. If these plots were taken out, it would be found that the respondent was entitled to no profits in the years in dispute. The suit was instituted on the 11th day of April, 1905, in the court of the Assistant Collector. This officer without framing any issue upon the plea above mentioned, as raised by the appellant, gave the respondent on the 10th of May 1905, a decree but not for the full amount claimed by him for reasons with which I am not concerned in this appeal.

The plaintiff filed an appeal to recover the amount which had not been decreed and the defendant in a memorandum of objections again raised the plea already mentioned. On the 2nd of August 1905, the District Judge by an order passed under section 566 of the Code of Civil Procedure directed the Assistant Collector to try the issue raised in defendant's written statement and on the 24th of March 1906, he returned a finding to the effect that there was no evidence on the file that there had been any interchange of plots between the two *pattis*.

In the interval, the defendant had sought relief in the Civil Court, and had filed a suit for a declaration that the plots mentioned in his defence in the Revenue Court really belonged to the 15 biswa *patti*, and on the 19th of March 1906, he got the declaration he had asked for and promptly produced it before the Assistant Collector. That court in spite of this decree found as I have already said that there was no evidence.

The District Judge on the 28th of June 1906 accepted the finding of the Assistant Collector, and as regards the decree of the Civil Court, dated 19th March 1906, to which his attention was called, held that until the defendant had got the village records altered in terms of that decree, no effect could be given to it in a suit of this nature, and that the profits must be calculated on the recorded shares as they then stood according to the *khowat*.

The decision of the 19th March 1906, was finally upheld by this Court in Second Appeal on the 6th of May 1908.

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The defendant has in this Second Appeal which he filed on the 3rd of November 1906, again raised the question regarding the transfer of the plots and contended that the Revenue Courts should have read the entries in the village records subject to the Civil Court's decree.

It was at first thought that the decision of the question here raised turned upon the interpretation which should be put upon clause (3) of section 201 of Local Act No. II of 1901. That clause has been differently interpreted by learned Judges of this Court—see *Dil Kunwar v. Udai Ram and others* (1), *Dhanka v. Umrao Singh* (2), and *Banwari Lal and another v. Niadar* (3). But in my opinion whichever of these two interpretations be put upon clause (3) of section 201, it matters little so far as this appeal is concerned. Before the Assistant Collector made his return to the District Judge on the 24th of March 1906, he had before him in Court and on the file of the record the judgment *inter partes* of a Court of competent jurisdiction to the effect that the plaintiff had no proprietary right to the plots mentioned in the written statement of the defendant.

The concluding words of section 201 of the Local Act No. II of 1901 in clear terms reserves the right of any person to establish by suit in the Civil Court that the plaintiff who has instituted a suit under the provisions of Chapter XI of Act No. II of 1901 (and the plaintiff in the case was so suing) had not the proprietary rights he claimed to have, at any rate in the whole as he claimed it.

We have already in the case of *Durga Shanker v. Gur Charan and another* (4) held "that when as between parties to the revenue suit, a Civil Court of competent jurisdiction has decided the title to the property adversely to the plaintiff, who claims profits, the Revenue Court is not competent to ignore that decision."

For these reasons I would reverse the decree of the District Judge on this preliminary point and remand the case under order XLI, rule 23, with directions to re-admit the appeal under its original number in the register and to proceed to determine it on its merits. Under the circumstances costs should abide the result.

(1) (1906) I. L. R., 29 All., 148.

(2) (1907) I. L. R., 30 All., 58.

(3) (1907) I. L. R., 29 All., 158.

(4) Weekly Notes 1906, p. 1.

AIKMAN, J.—I concur in the judgment of my learned colleague and in the order proposed by him and have nothing to add.

GRIFFIN, J.—I also concur.

BY THE COURT.—The decree of the District Judge on the preliminary point is reversed and the case remanded under order XLI, rule 23 of the Code of Civil Procedure (Act V of 1908) with directions to re-admit the appeal under its original number in the register and to proceed to determine it on the merits. Costs will abide the result.

Appeal decreed and cause remanded.

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

GOBINDI (PLAINTIFF) v. SAHEB RAM AND ANOTHER (DEFENDANTS). *
Act (Local) No. II of 1901 (Agra Tenancy Act), section 201 (3)—Presumption—Question of title decided by Civil Court—Subsequent suit for profits by recorded co-sharers.

When a Civil Court of competent jurisdiction has decided a claim to property, and this has been followed by a wrong entry in the revenue papers, held that in a subsequent suit for profits the claim must be in proportion to the share obtained under the Civil Court decree and no presumption arises under section 201 of the Agra Tenancy Act.

THE facts of this case are as follows :—

The plaintiff in 1901 obtained certain shares in immovable property under a decree of the Munsif of Hathras. She applied for entry of her name in the revenue papers but owing to some error her name was recorded in respect of a larger share than she had obtained under the decree. She sued the defendants for profits calculated on the share as entered in the Revenue papers. The defendants pleaded that the plaintiff was entitled to profits in proportion to the share decreed in her favour and not as entered in the *khewat*. The Court of first instance decreed the claim for profits in her favour in proportion to her recorded share. The lower appellate Court (Additional Judge of Aligarh) modified the decree holding that the plaintiff was entitled to profits proportionate to the share she had got under the Civil Court decree. The plaintiffs appealed to the High Court.

* Second Appeal No. 942 of 1907, from a decree of Khetter Mohan Ghosh, Additional Judge of Aligarh, dated the 8th of June 1907, reversing a decree of G. Flowers, Assistant Collector 1st Class, of Aligarh, dated the 21st of November, 1906.

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