

## MISCELLANEOUS CIVIL.

1908  
December 4.

*Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.*  
LACHMAN DAS (PETITIONER) v. NABI BAKHSI AND OTHERS (OPPOSITE PARTIES).\*

*Act (Local) No. II of 1901 (Agra Tenancy Act), sections 31, 57, 179, 199—  
Suit by zamindar for ejectment of tenant and sub-lessee—Appeal—Jurisdiction.*

A zamindar sued to eject one of his occupancy tenants and also certain sub-lessees to whom the occupancy tenant had sub-let part of his holding for building purposes. *Held* that this was a suit falling within section 31 (2) of the Agra Tenancy Act, 1901, and an appeal from the decree therein lay to the Commissioner and not to the District Judge.

THIS was a reference by the District Judge of Saharanpur. The facts of the case appear from the following order.

“In this case a conflict of jurisdiction arises, and as it appears doubtful whether the appeal is cognizable in the Civil or Revenue court and how the appeal is to be disposed of having regard to the provisions of the N.-W. P. Tenancy Act which give rise to the conflict of jurisdiction, I submit the record to Honourable High Court under section 195 of the N.-W. P. Tenancy Act read with section 193 of the Act and 617 of the Civil Procedure Code together with the following statement of the reasons for my doubt.

“The suit in this case was brought under section 57, clauses (b) and (d), and sections 31 and 63 of the Rent Act.

“Plaintiff sued as a zamindar for the ejectment of defendant No. 1, his occupancy tenant, on the ground that defendant No. 1 had sublet his land permanently for building purposes to the remaining six defendants. Defendant No. 1, among other objections, raised the point that the claim was not cognizable by a Revenue Court, but no issue was framed by the Lower Court, and the point was not pressed and no question of jurisdiction was decided.

“On the other hand appellant has also appealed against the amount of compensation, which is a matter which can only be appealed to this court.

“The Honourable High Court is therefore asked for a direction as to which court should entertain this appeal.

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LACHMAN  
DAS  
v.  
NABI  
BAKSH.

Pandit *Mohan Lal Nehru*, for the appellant.

Mr. *J. Simeon*, for the opposite party.

STANLEY, C.J., and BANERJI, J.—This case has been referred to us by the learned District Judge of Saharanpur under the provisions of section 195 of the Agra Tenancy Act, the learned Judge having doubts as to whether an appeal preferred to him lay in the Civil Court or in the Revenue Court. The suit out of which the reference arises was brought by a landholder against a tenant and sub-lessees from that tenant. The plaintiff's allegation was that the tenant, who is the first defendant, had no power to grant sub-leases to the other defendants, and that by granting the leases the tenant had not only contravened the provisions of the Tenancy Act but had also done an act detrimental to the land and inconsistent with the purpose for which it was let. The suit was described in the plaint as one under sections 57 and 31 of the Tenancy Act. Section 57 of that Act provides that a tenant may be ejected on any of the grounds mentioned in the different clauses of the section. The ground mentioned in clause (d) is that the tenant had sub-let or otherwise transferred his holding in contravention of the provisions of the Act. Under clause (b) a tenant may be ejected on the ground of any act or omission detrimental to the land in his holding or inconsistent with the purpose for which it was let. If the suit is only against the tenant on the ground specified in clause (b) it seems to us that an appeal would lie to the District Judge from the decree of the court of first instance under section 177 of the Act, it being one of the suits included in schedule IV, group B. But where the suit is for ejection of the tenant and his transferee on the ground mentioned in clause (d) of section 57, it is a suit under the second sub-section of section 31 of the Act and is one of the suits mentioned in group C of the fourth schedule. An appeal in such a case lies to the Commissioner under section 179. The question is whether the present suit is one of the description mentioned in group B, No. 13, or in group C, No. 18. In our judgment the suit was one under section 31 (2), being a suit in which the land-holder sued for the ejection of the tenant and his sub-lessees on the ground mentioned in clause (d) of section 57. The fact of the sub-lessees being made parties to the

suit clearly indicates that the suit is one of the description mentioned above. It is not a suit for the ejection of the tenant on the ground of the commission of a breach of condition by a sub-lessee or on the ground of any act done or omission made by such lessee, as mentioned in section 64 (1) (a). Therefore the only section under which the suit in this case could be brought, and was brought, was section 31 (2). An appeal from the decree in the suit lay to the Commissioner.

We find that an appeal was preferred to the Commissioner but he returned the memorandum of appeal on the ground that a question of proprietary title was raised. On this point we are unable to agree with the learned Commissioner, inasmuch as the first defendant, the tenant, never denied his tenancy and never claimed proprietary right in the land within the meaning of section 199 of the Act. What he claimed was that under a custom prevailing in the locality he had a right to transfer his holding. This was not a question of proprietary title and section 199 did not therefore apply. In our judgment the appeal ought to have been heard by the Commissioner, and we accordingly direct that the petition of appeal be returned by the District Judge for presentation in the Court of the Commissioner.

## APPELLATE CIVIL.

*Before Mr. Justice Richards and Mr. Justice Griffin.*

GOPAL PRASAD AND ANOTHER (DEFENDANTS) v. BADAL SINGH AND OTHERS (PLAINTIFFS).\*

*Pre-emption—Wajib-ul-arz—Contract for period of settlement—Effect of expiry of period of settlement pending suit for pre-emption.*

*Held* that in the case of a suit for pre-emption based upon a contract embodied in the *wajib-ul-arz* the rights of the plaintiff remained unaffected by the fact that the period of the current settlement expired during the pendency of the suit. *Janki Prasad v. Ishar Das* (1) and *Ram Gopal v. Piari Lal* (2) distinguished.

THREE suits for pre-emption were filed by the plaintiff Badal Singh against the appellants in respect of three sales, dated 4th May 1906, 27th June 1906, and 27th August 1906, respectively.

\* First Appeal No. 91 of 1908 from an order of H. David, Judge of the Court of Small Causes, Cawnpore, exercising powers of a Subordinate Judge, dated the 29th of May 1908.

(1) (1899) I. L. R., 21 All., 374. (2) (1899) I. L. R., 21 All., 441.

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