

Criminal Procedure, we have power under section 195, clause (6) of that Code to revoke the sanction which the learned District Judge has given. In the case of *Muthuswami Mudali v. Veeni Chetti* (1) Mr. Justice Wallis expressed his opinion that it was never intended by section 195 that there should be more than one appeal in a case like the present. In the case of *King Emperor v. Serh Mal* (2) we expressed our concurrence with what was said by Wallis, J., in the case referred to. We see no reason to alter our opinion. We therefore hold that we have no power of interference in this case, and reject the application. "

1908

KANHAI LAL
v.
CHHADAMMI
LAL.

APPELLATE CIVIL.

1908

November 28,

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.

SAGAR MAL (DEFENDANT) v. MAKHAN LAL AND OTHERS (PLAINTIFFS).*

Act (Local) No. II of 1901 (Agra Tenancy Act), sections 4 (5), 32 (2)—Rent free grant—"Holding"—"Tenant."

Held that a rent free grant is not a "holding," nor is the grantee a "tenant" within the meaning of the Agra Tenancy Act, 1901. *Abdul Karim v. Ramzan* (3) approved.

THE plaintiff in this case brought his suit in a Civil Court for partition of a rent-free holding. The Court of first instance (Munsif of Meerut) gave the plaintiff a decree, and this decree was in appeal confirmed by the Additional Judge. One of the defendants, Sagar Mal, appealed from this decree to the High Court, upon the ground that in the case of a rent free grant, as of any other tenancy coming under the Agra Tenancy Act, a Civil or a Revenue Court is prohibited by section 32, clause (2), of the Act from entertaining a suit for partition.

Pandit *M. L. Sandal*, for the appellants.

Mr. *M. L. Agarwala*, for the respondents.

STANLEY, C.J. and BANERJI, J.—This appeal arises in a suit for partition of a rent free holding. Both the Courts below granted the plaintiff a decree. This appeal has been preferred by one of the defendants, Sagar Mal, and the only ground of appeal pressed

* Second Appeal No. 1284 of 1907 from a decree of Muhammad Ahmad Ali Khan, Additional Judge of Meerut, dated the 31st of May 1907, confirming a decree of Hari Mohan Banerji, Munsif of Meerut, dated the 12th of January 1907.

(1) (1907) I. L. R., 30 Mad., 332. (2) Weekly Notes, 1908, p. 102,
(3) Weekly Notes, 1908, p. 197.

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SAGAR MAL
v.
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before us is that in the case of a rent free grant, as of any other tenancy coming under the Agra Tenancy Act, a Civil or a Revenue Court is prohibited by section 32, clause (2), of the Act from entertaining a suit for partition. We are of opinion that this section does not apply to a rent free grantee. The section in question falls within Chapter II, which deals with "the devolution, transfer and division of tenancies." A tenant is defined in section 4, clause (5), and does not include a rent free grantee. A rent free grantee, as also a mortgagee of proprietary rights, is by that definition expressly excluded. Consequently a rent free grant does not appear to us to be a "holding" within the meaning of section 32. The word "holding" in that section means, we think, the holding of a tenant as defined by the Act. We may point out that the heading of section 32 is:—"Division of tenancies," that is the division of the holdings of tenants as defined in section 4. We may also point out that Chapter X of the Act deals with the resumption of rent free grants. A separate Chapter in the Act is devoted to these grants. This view was expressed by our brother Richards in the case of *Abdul Karim v. Rumzan* (1). Our learned brother, after referring at length to some of the sections of the Agra Tenancy Act, held that a suit for partition of land alleged to be rent free is not excluded from the jurisdiction of the Civil Court either by section 233 (k) of the Land Revenue Act or by section 32 of the Agra Tenancy Act. We therefore agree in the view expressed by both the Courts below and dismiss the appeal with costs.

Appeal dismissed.

(1) *Weekly Notes*, 1908, p. 197.