

Before Sir George Knox, Acting Chief Justice, and Mr. Justice Richards.

SHAHZADE SINGH AND ANOTHER (PLAINTIFFS) v. MUHAMMAD MEHDI ALI KHAN (DEFENDANT).\*

Act (Local) No. II of 1901 (Agra Tenancy Act), section 199—Determination by Revenue Court of question of proprietary title—Subsequent suit in Civil Court—*Res judicata*.

Held that the application of the principle that the decision of a question of title by a revenue court under section 199 of the Agra Tenancy Act, 1901, constitutes a *res judicata* in respect of a subsequent suit *in pari materia* brought in a Civil Court, is not affected by the fact that the Civil Court suit may be beyond the pecuniary limits of the jurisdiction of the Revenue Court.

THIS was an appeal under section 10 of the Letters Patent from a judgment of BANERJI, J.

The facts of the case sufficiently appear from the judgment under appeal, which was as follows:—

“The suit out of which this appeal arises was brought by the respondents for a declaration that they own plot No. 317, which is situated in the village of which the appellant is the landholder. The court of first instance dismissed the suit, but the lower appellate court has reversed the decree of that court. The defendant has preferred this appeal. The only contention raised on his behalf is that the matter in controversy between the parties in the present suit is *res judicata*, in consequence of the decision of the Revenue Court in a suit previously brought by the appellant against the respondents. That was a suit for arrears of rent in respect of the very plot of land now in question and was instituted in the court of an Assistant Collector of the second class. The defendants to that suit, namely, the present plaintiffs, pleaded that they were not the tenants of the present appellant, but had a proprietary title in the land. The Revenue Court itself tried the question of title, and held that the present plaintiffs were tenants of the appellant. The decision of the court of first instance in that case was affirmed in appeal by the Collector. It is contended that as the question of title raised in the previous case was tried and determined by the Revenue Court, it was a decision within the purview of sub-section (3) of section 199 of the Tenancy Act and operates as *res judicata* in the present suit. This contention is in my opinion well founded.

\* Appeal No. 15 of 1903, under section 10 of the Letters Patent.

When the question of title was raised in the Revenue Court, that court could, under the provisions of section 199, either refer the then defendants to the Civil Court for determination of the question of title raised, or determine such question of title itself. It is immaterial whether the court before which the question was raised was a court of an Assistant Collector of the first class or of the second class. The Revenue Court having decided the question adversely to the present plaintiffs, that decision must be treated as the decision of a Civil Court, and so far as the same question of title raised in the present suit is concerned, that decision operates as *res judicata*. This was the view taken by this Court in *Salig Dube v. Deoki Dube* (1) and *Beni Pande v. Raja Kausal Kishore Prasad* (2). The learned counsel for the respondents has ingeniously argued that the court which decided the previous suit was not a court competent to try the present suit and therefore its decision cannot have the effect of *res judicata*. He contends that the Assistant Collector of the second class who tried the previous suit had jurisdiction over suits of the value of Rs. 100 only, whereas the present suit has been valued at Rs. 250, and therefore the Assistant Collector could not be held to be a court competent to try the subsequent, namely the present, suit. Having regard to the provisions of section 199, if the then defendants had been referred to a Civil Court, the case would have been instituted in the Civil Court of the lowest grade, having jurisdiction over the suit. The Revenue Court, which, according to the provisions of that section was competent to try the suit and the question of title raised in it, must be deemed for the purposes of that section, to be the Civil Court which would have been competent to try the suit if the parties had been referred to a Civil Court. This was held in the analogous case of a question of title determined by a Revenue Court under the provisions of the Land Revenue Act in *Har Charan Singh v. Har Shankar Singh* (3). The Court of the Assistant Collector of the second class being thus, for the purposes of the suit which was before it, a Civil Court of the lowest grade competent to try the suit, its decision must be

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(1) Weekly Notes, 1907, p. 1. (2) (1906) I. L. R., 29 All., 160.  
(3) (1895) I. L. R., 18 All., 59.

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deemed to be a decision of such Civil Court, and the present suit being cognizable by a Civil Court of the lowest grade, the decision of the Revenue Court in the former suit operates as *res judicata*. Although an appeal did not lie directly from the decision of the Assistant Collector of the second class to the District Judge, an appeal lay to the District Judge from the decision of the Collector in appeal upholding the decision of the Assistant Collector, so that the question of title could, if the defendants to that suit had so chosen, have been raised in and determined by the court of the District Judge. In this view the present suit is not maintainable and the appeal must prevail. I accordingly allow it with costs, and setting aside the decree of the court below, restore that of the court of first instance dismissing the plaintiffs' suit with costs in all courts."

The plaintiffs appealed.

Munshi *Gulzari Lal*, for the appellants, submitted that under the rulings of this Court, the latest of which was in the case of *Lal Singh v. Khaliq Singh* (1), it was laid down that the judgment of a Revenue Court under section 199, Act II of 1901, on the question of proprietary title had the effect of *res judicata* and section 13 of Act XIV of 1882 would bar a subsequent suit. In order to apply the said principle, it had to be seen whether the court which decided the former suit was or was not competent to decide not only the particular issue of title, but also the second suit in which that question had been raised. The section was to be applied as a whole. An Assistant Collector of the second class had jurisdiction to try suits up to the value of Rs. 100 and therefore he had no jurisdiction to try the present suit which was valued at Rs. 250. To hold that the judgment of the Revenue Court in this case barred the present suit, would amount to holding that the decree of a Revenue Court when acting as a Civil Court under section 199 of the Tenancy Act was to be treated as the decree of a Civil Court of the highest jurisdiction. This would be against all principles. He relied on *Misir Raghobar Dial v. Sheo Baksh Singh*, (2), *Gokul Mandar v. Pudmanund Singh* (3) and *Sheikh Hassu v. Ram Kumar Singh*, (4).

(1) (1909) I. L. R., 31 All., 323.

(2) (1882) I. L. R., 9 Calc., 439.

(3) (1902) I. L. R., 29 Calc., 707.

(4) (1894) I. L. R., 16 All., 183.

Munshi Govind Prasad, for the respondent, was not called upon.

KNOX, A. C. J. and RICHARDS, J:—We agree with the view taken by our learned brother in this case. The matter now raised has been decided more than once by this Court in the same way and we are not disposed to take any other view, which might well open a door to fraud. The appeal is dismissed with costs.

*Appeal dismissed.*

*Before Mr. Justice Banerji and Mr. Justice Alston.*

CHITTAR MAL AND ANOTHER (PLAINTIFFS) v. BIHARI LAL AND OTHERS  
(DEFENDANTS).\*

*Act No. XV of 1877 (Indian Limitation Act), schedule II, article 85—*

*“Current mutual account”—Limitation.*

*Held* that a “mutual” account within the meaning of article 85 of the second schedule to the Indian Limitation Act, 1877, is an account of dealings between two parties which are such as to create independent obligations in favour of one party against the other. *Ganesh v. Gyanu* (1) and *Ram Pershad v. Harbans Singh* (2) followed. *Bhawan Singh v. Tika Ram* (3) referred to.

THIS was a suit for the recovery of a sum of Rs. 1,235-15-6 as the balance of an account subsisting between the parties. The plaintiffs alleged that an account of dealings between them and the defendants was opened on Maghsar Sudi 9th, Sambat 1956, corresponding to the 11th December 1899, and that on the 13th of August 1904, the account was stated between the parties and a balance of Rs. 2,394-9-3 was struck in favour of the plaintiffs; that subsequently the plaintiffs realised Rs. 1,479-10-6 on account of the price of wheat sold by them for the defendants, and the defendants were debited with Rs. 312-14-0 on account of interest and other charges, the amount claimed being the balance. The defendants asserted that they had no dealings with the plaintiffs and denied that any account was stated or that any sum was due by them. The court of first instance found in favour of the defendants and dismissed the suit. Upon appeal

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\* Second Appeal No. 616 of 1908 from a decree of Khetra Mohan Ghose, Second Additional Judge of Aligarh, dated the 30th of March 1908, confirming a decree of Ram Chandra Chaudhri, Munsif of Hathras, dated the 12th of December 1906.

(1) (1897) I. L. R., 22 Bom., 606. (2) (1907) 6 C. L. J., 158.  
(3) Weekly Notes, 1896, p. 186.