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If the dedication was complete, it is clear that he could not revoke it and make another gift. We are of opinion that in the present instance the first dedication was not valid. It was not a dedication to any particular deity which was subsequently to be installed in a temple. It was a dedication to the Thakurji in his thakurdwara without mentioning the Thakurji to whom the property was dedicated. As we have already said, there was no Thakurji and no thakurdwara, therefore the dedication was bad on the ground of uncertainty. This case is distinguishable from the case of *Bhupati Nath Smrithitirtha* v. *Ram Lal Moitra* (1), *Mohar Singh* v. *Het Singh* (2) and *Chaturbhuj* v. *Chaturjit* (3). In all those cases the gift was in favour of the deity named in the deed of dedication and it was held that although the image of the deity had not been installed and consecrated, the endowment was nevertheless valid. We dismiss the appeal with costs.

Appeal dismissed.

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June 20.

Before The Hon'ble Mr. H. G. Richards, Chief Justice, and Mr. Justice Banerji.

BHUP (DEFENDANT) *v.* RAM LAL (PLAINTIFF).*

Act (Local) No. II of 1901 *(Agra Tenancy Act), sections* 95, 167—*Civil and Revenue Courts—Jurisdiction—Dispute between rival claimants to a tenancy.*

Section 95 of the Tenancy Act was not intended to apply to the case of disputes between rival claimants to a tenancy. It was intended to apply to questions arising between the landlord on the one side and the tenant on the other. *Primâ facie* the Civil Court is the proper court to try all questions, and it is only when suits are expressly excluded from its cognizance that its jurisdiction is ousted. *Kali Charan* v. *Musammat Utmi* (4) referred to.

THIS was an appeal under section 10 of the Letters Patent from a judgement of KARAMAT HUSAIN, J.

The facts of the case are stated in the judgement under appeal, which was as follows :—

"The admitted facts of the case are, that Mawashi was an occupancy tenant and that on his death the names of his widow, Musammat Sarupi, and Bhupan, alleged to be the adopted son of Mawashi, were entered as occupancy tenants. Ram Lal applied that his name be entered as the occupancy tenant for he was the adopted son of Mawashi. The zamindar was made a party to this application and opposed it. The Court of Revenue came to the conclusion that Bhupan was

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* Appeal No. 27 of 1911 under section 10 of the Letters Patent.

(1) (1909) I. L. R., 37 Calc., 128.
(2) (1910) I. L. R., 32 All., 337.
(3) (1910) I. L. R., 33 All., 253.
(4) (1910) 7 A. L. J., 658.

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the adopted son of Mawashi and that he was in possession of the holding. On these findings it rejected Ram Lal's application. Ram Lal then instituted the suit which has given rise to this appeal, on the allegation that he was the adopted son of Mawashi, and that he had been in joint cultivation of the holding with Mawashi until his death. He sought two reliefs :—(1) that it might be declared that he was in lawful possession, as the heir of Mawashi, over his occupancy holding, and (2) that in consequence of the Revenue Court's order the plaintiff be held to be out of possession and possession might be awarded to him. The suit was resisted by Bhupan, who alleged that he and not the plaintiff was the adopted son of Mawashi ; that he was in possession as the heir of Mawashi, and that the suit was not cognizable by a Civil Court.

"The court of first instance held that the suit was cognizable by a Civil Court, but dismissed it on the ground that the plaintiff was not the adopted son of Mawashi. The plaintiff appealed to the lower appellate court, and the last plea in the memorandum of appeal was that the plaintiff was the nearest male collateral of the deceased ; was joint with the deceased, and was, therefore, under the Tenancy Act, entitled to succeed Mawashi. The lower appellate court in substance found that the defendant was not the adopted son of Mawashi, that the plaintiff, though not the adopted son of Mawashi, was his nearest collateral, and had been in possession of the occupancy holding with Mawashi up to the time of the latter's death. On these findings, the lower appellate court reversed the decree of the court of first instance and give the plaintiff a decree for possession as a tenant without declaring the class of his tenancy. The defendant has preferred the second appeal to this court, and it is argued by his learned counsel that the lower appellate court was wrong in granting the plaintiff a decree for possession as a tenant without specifying the class of the tenancy. In support of this contention reliance is placed upon *Dori Lal* v. *Sardar Singh* (1).

"In this case the dispute is between two rival claimants of succession to an occupancy tenant and the right of the zamindar is in no way in question. Such a case, therefore, in my opinion, is within the exclusive jurisdiction of a Civil Court, and section 95 of the Tenancy Act, or section 167 of the same has no application to the case before me. Section 95 of the Tenancy Act deals with questions which arise between a landholder and his tenant, and has nothing to do with a dispute between two persons, each of whom claims to be the heir of an occupancy tenant. Section 167 does in no way oust the jurisdiction of the Civil Court, when the dispute is between two persons as to their right to succeed to an occupancy holding. That being so, the ruling relied on by the learned counsel has no application. The remarks of the lower appellate court towards the end of its judgement, "I therefore hold that the plaintiff is entitled to possession as a tenant without declaration of his class," in my opinion, mean that the lower appellate court's decree entitles the plaintiff to possession of the holding against the defendant who was a trespasser. It did not establish any relation between him and the zamindar. The result is that the appeal fails and is dismissed with costs."

(1) (1908) 5 A. L. J., 514.

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Mr. *Nihal Chand*, for the appellants:—

No civil suit is maintainable. Section 95 of the Agra Tenancy Act read with section 167, barred the suit. The landlord is always a necessary party to suits of this kind and he had not been impleaded. The judgement of the Revenue Court, to which the plaintiff had at first gone and where his suit had been rejected operates *res judicata*. He relied on *Sheo Narain* v. *Parmeshar Rai* (1), *Ajudhia Rai* v. *Parmeshar Rai* (2), *Subrani* v. *Bhagwan Khan* (3), *Niadar* v. *Baru Mal* (4), *Dori Lal* v. *Sardar Singh* (5).

Dr. *Tej Bahadur Sapru*, for the respondents, was not called upon.

RICHARDS, C. J., and BANERJI, J.:—This appeal arises out of a suit instituted in the Civil Court for a declaration of the plaintiff's title to a certain occupancy holding or in the alternative for possession. The plaintiff's title was based upon his being the adopted son of one Mawashi, who admittedly was, prior to his death, the occupancy tenant. The defendant was a rival claimant to the tenancy. He also claimed to be the adopted son of Mawashi. The court of first instance dismissed the suit holding that the plaintiff had not made out his adoption. The court of first appeal agreed with the finding of the court of first instance that the plaintiff had not made out the adoption, but it found that the plaintiff was a collateral relative who had been joint in the cultivation of the holding, that he had been in possession, and that therefore his title was superior to that of the defendant, and it gave a decree for possession against the defendant, whom it held not to be the adopted son of Mawashi. On second appeal to a Judge of this Court the decision of the Court of first appeal was confirmed. The present appeal has been instituted under the Letters Patent. It appears that prior to the institution of the present suit an application in the Revenue Court was made by the plaintiff for mutation of names. In the course of those proceedings the very same question of adoption was raised and considered, with the result that the plaintiff was unsuccessful. The

(1) (1895) I. L. R., 18 All., 270. (3) (1896) I. L. R., 19 All., 101.
(2) (1895) I. L. R., 18 All., 340. (4) (1902) I. L. R., 24 All., 153.
(5) (1908) 5 A. L. J. 514.

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argument which has been addressed to us was chiefly one based upon the contention that having regard to the provisions of sections 95 and 167 of the Agra Tenancy Act the suit was not maintainable in the Civil Court. Section 95 provides that at any time during the continuance of a tenancy *either the landholder* or *the tenant* may sue for a declaration as to any of the matters specified in the section. Clause *(a)* is the name and description of the tenant of the holding. Section 167 provides that no Civil Court shall take cognizance of any suit or application of the nature specified in the fourth schedule. Amongst the suits and applications specified in schedule IV are proceedings under section 95. It is argued on behalf of the appellant that the plaintiff's proper and only course was an application or suit in the Revenue Court for a declaration as to the name and description of the tenant. It is further argued that the proceedings that took place in the Revenue Court were proceedings of this very nature. In our opinion section 95 was not intended to apply to the case of disputes between rival claimants to a tenancy. It was intended to apply to questions arising between the landlord on the one side and the tenant on the other. *Primâ facie* the Civil Court is the proper court to try all questions, and it is only when suits are expressly excluded from its cognizance that its jurisdiction is ousted. It certainly does not appear to us that the provisions of section 95 coupled with the provisions of section 167 exclude the jurisdiction of a Civil Court in questions between rival claimants to tenancies. The very words of the section itself in which it says the "landlord or tenant" may sue, seems to demonstrate that the intention of the section was to provide a tribunal for questions arising between a landlord and tenant. The section does not provide for possession, it only provides for a declaration; this also goes to show that the section contemplated the case of a landlord and a tenant and an existing tenancy. A number of cases have been cited by the learned counsel on behalf of the appellant. Many of these cases were decided on the construction of the provisions of Act No. XII of 1881. The provisions of that Act are by no means the same as the provisions of the present Tenancy Act. Practically the same question

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arose in the case of *Kali Charan* v. *Musammat Utmi* (1). In a quite recent case, namely, F. A. No. 164 of 1910, the same question in principle arose and was decided by one of us and Mr. Justice TUDBALL. The only other question which was urged in the appeal was that the zamindar was a necessary party to the suit inasmuch as if the occupancy tenant had died leaving no heirs, as defined by section 22 of the Tenancy Act, the tenancy would be extinguished for the benefit of the zamindar. In our opinion there is no force whatever in this contention. It would be quite wrong that the zamindar should be brought into a dispute between rival claimants to a tenancy with which he had nothing to do. The zamindar is, of course, not bound by any decree which might result in litigation between two rival cliamants. In our opinion the decision of our learned brother was quite correct, and we dismiss the appeal with costs.

Appeal dismissed.

FULL BENCH.

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June 2,
July 10.

Before The Hon'ble Mr. H. G. Richards, Chief Justice, Mr. Justice Sir George Knox, Mr. Justice Banerji, Mr. Justice Karamat Husain, Mr. Justice Tudball, Mr. Justice Chamier and Mr. Justice Piggott.

DURGA PRASAD AND OTHERS (PLAINTIFFS) *v.* HAZARI SINGH (DEFENDANT).*

Act (Local) No. II of 1901 *(Agra Tenancy Act), section* 201—*Evidence—Presumption—Record of plaintiff's name as co-sharer—Act No. I of* 1872 *(Indian Evidence Act), section* 4.

Held by RICHARDS, C. J., KARAMAT HUSAIN, TUDBALL, CHAMIER and PIGGOTT, JJ., (KNOX, J., *dissenting*), that in a suit instituted under the provisions of chapter XI of the Agra Tenancy Act, 1901, where the plaintiff is recorded as having proprietary title entitling him to institute the suit, the Revenue Court is not competent to go behind the record, receive evidence and itself try the question of proprietary title. *Bechan Singh* v. *Karan Singh* (2) followed. *Waris Ali Khan* v. *Parsotam Narain* (3) overruled.

THIS was a suit brought under the provisions of chapter XI of the Agra Tenancy Act, 1901, by recorded co-sharers for profits.

* Second Appeal No. 902 of 1910 from a decree of E. M. Nanavutty, Additional Judge of Bareilly, dated the 30th of April, 1910, reversing a decree of Raghunath Prasad, Assistant Collector, first class, of Pilibhit, dated the 29th of September 1909.

(1) (1910) 7 A. L. J., 658. (2) (1908) I. L. R., 30 All. 447.
(3) (1910) I. L. R., 32 All., 427.