

APPELLATE CIVIL.

1911
March, 10.*Before Mr. Justice Sir George Know and Mr. Justice Karamat Husain.*

NARAIN SINGH (DEFENDANT) v. GOBIND RAM (PLAINTIFF)*

Act (Local) No. II of 1901 (Agra Tenancy Act), section 56—Jurisdiction—Civil and Revenue Courts—Suit for ejection of a tenant in Revenue Court—Subsequent suit in Civil Court against the same defendant as trespasser.

Where the plaintiff had previously sought to eject the defendant by suit in the Revenue Court on the plea that he was the plaintiff's sub-tenant, but had failed, on the finding that the defendant was an occupancy tenant, it was held that the plaintiff could not thereafter sue the defendant in the Civil Court to evict him as a trespasser.

THE facts of this case were as follows :—

In a previous litigation in the Revenue Courts the plaintiff Gobind Ram had sought to eject the defendant from a certain occupancy holding upon the ground that the defendant was the plaintiff's sub-tenant, but had been defeated on the finding that the defendant was an occupancy tenant. The plaintiff then brought the present suit in a Civil Court to evict the defendant from that part of the occupancy holding of which he was in possession. He alleged that the land held by Narain Singh, the defendant, had been sublet to him at a certain rent, but as the latter had in the Revenue Court pleaded that he was a partner and not a sub-tenant, he had by this act become a trespasser and should on that ground be ejected. The Court of first instance dismissed the suit, but on appeal the lower appellate Court reversed the decree and remanded the case for trial on the merits. The defendant appealed.

Babu Sarat Chandra Chaudhri (with Babu Jogindro Nath Chaudhri), for the appellant.

Mr. W. Walluch (with him Munshi Govind Prasad), for the respondent.

KNOX and KARAMAT HUSAIN, JJ.—This appeal arises out of a dispute between two persons who are both of them subject to the provisions of Local Act No. II of 1901. The respondent, Gobind Ram, was plaintiff and claimed to be the sole tenant of a large occupancy holding. He first went to the Revenue Court

* First Appeal No. 119 of 1910 from an order of A. Sabonadiere, District Judge of Aligarh, dated the 9th of November, 1910.

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and filed an application in that court for the ejection of the appellant, Narain Singh, his nephew, alleging that Narain Singh was his sub-tenant of a part of a large holding. The application was dismissed. The Commissioner held that Narain Singh had made out his plea that he was an occupancy tenant and not a sub-tenant. This decision was confirmed by the Board of Revenue. Whether it was necessary or not to go so far as the Revenue Courts went, we need not consider. Gobind Ram then came to the Civil Court and filed the suit out of which the present appeal has arisen to eject the defendant from that part of the occupancy holding which is in his possession. He in the plaint alleged that the land held by Narain Singh had been sublet to him at a certain rent per annum, but as the latter had in the Revenue Court pleaded that he was a partner and not a sub-tenant, he had by this very act become a trespasser and should on that ground be ejected. The court below appears to have overlooked the provisions of section 56 of Act No. II of 1901, which provides that no tenant shall be ejected otherwise than under the provisions of the Act. Gobind Ram, according to his own showing, treated Narain Singh as a tenant whom he wished to be ejected by the Revenue Court, but having failed there, he comes to the Civil Court to have him ejected. He cannot do so by coming to the Civil Court. We hold that the Civil Court has no jurisdiction in this case. We decree the appeal, set aside the order of the lower appellate court with costs and restore the decree of the court of first instance.

Appeal decreed.