

## FULL BENCH.

1911  
February 7.

Before Justice Sir George Knox, Mr. Justice Banerji and Mr. Justice  
Karamat Hussain.

BED SARAN KUNWARI, (PLAINTIFF) v. BHAGAT DEO AND OTHERS  
(DEFENDANTS).\*

*Act (Local) No. II of 1901 (Agra Tenancy Act), section 63—Civil Procedure Code (1908), section 11, Explanation VI—Suit for ejectment in Revenue Court—Question of title decided by Assistant Collector—Decision allowed to become final—Res judicata.*

In a suit for ejectment in the Revenue Court, the defendants to that suit pleaded title in themselves, and the Assistant Collector determined that question and held that the plaintiff had failed to prove title as against them. This decision became final. In a subsequent suit in the Civil Court for declaration of title against the former defendants and also certain others; held that the decision of the Revenue Court operated as *res judicata* so far as concerned those persons who had been defendants to the previous suit, but not as against those who were no parties to the suit. *Behari v. Sheobalak* (1) referred to.

THE facts of this case were as follows :—

THE plaintiff, Sri Rani Bed Saran Kunwari, instituted a suit for ejectment in the Revenue Court in 1905 against Bhagat Deo [defendant No. 5] and Rabinath [father of defendants Nos. 6 and 7] on the allegation that the village in dispute was her ancestral property; that Bhagat Deo and Rabinath were lessees of the land in dispute; that the lease had expired and that the defendants had in collusion with the patwari got their names entered in the Revenue papers. The valuation of the suit was Rs. 132-6-0.

The defendants opposed the suit on the ground that they with certain other relatives were themselves the proprietors. On the 8th March, 1906, the Revenue Court found in favour of the defendants and dismissed the suit. The plaintiff did not appeal from this decree, but on the 21st March, 1906, she applied for correction of the entries in the revenue papers. Her application was disallowed in August, 1907, and she was directed to seek her remedy in the Civil Court. Accordingly she filed the suit out of which the present appeal arose for ejectment of Bhagat Deo

\* First Appeal No. 67 of 1910 from an order of Muhammad Ali, District Judge of Mirzapur, dated the 26th of February, 1910.

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and Rabinath, and those persons who were alleged to be proprietors. The valuation of this civil suit for purposes of jurisdiction was fixed at Rs. 1,800. One of the pleas set up in defence was that the suit was barred by *res judicata*. The defendants who were not parties to the ejectment suit also said in their defence that they were owners of an 8-anna share in the village and that the other defendants were owners of specific shares.

The court of first instance held that the suit was barred by the rule of *res judicata*, the question of proprietary title having been decided by the Revenue Court. Regarding the case as against those defendants who were not parties to the ejectment suit, it held that Baldeo and Rabinath had claimed a title, not only for themselves, but also for the other defendants, and that under Explanation VI of section 11, the suit was barred as against them too.

The lower appellate court, on appeal, held that the suit was barred as against those defendants who were parties to the ejectment suit, but that explanation VI of section 11 of the Civil Procedure Code had no application and the suit was not barred against the defendants who were no parties to that suit. The plaintiff appealed.

Munshi *Haribans Sahai* (with him The Hon'ble *Nawab Muhammad Abdul Majid*), for the appellant:—

The judgement in the former suit cannot operate as *res judicata* as the present suit cannot be tried by the Revenue Court. He referred to section 11 of the Code of Civil Procedure. The present suit is for a declaration of title as well as for possession, and it cannot be entertained by the Revenue Court which tried the first suit. The decision in that suit cannot operate as *res judicata* unless it be held that the present suit could be entertained by the Revenue Court; *Gokul Mundar v. Padmanand Singh* (1).

There is a special provision for partition cases, and a Revenue Court is to be considered a Civil Court for that purpose. The valuation of the ejectment suit being only Rs. 132, the Revenue Court could only become a court of lowest civil jurisdiction, i. e., a Munsif's Court, and could not try the present suit, the

valuation of which was Rs. 1,800 and which could be tried by the Subordinate Judge. He referred to *Behari v. Sheobalak* (2).

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

KNOX, BANERJI, and KARAMAT HUSAIN, J.J.—This appeal arises out of a suit brought by Sri Rani Bed Saran Kuar, appellant before us, in which she asked for recovery of possession of mauza Jamvanwa and for a declaration of her proprietary right to the same. One of the pleas raised in defence was that the present suit was barred by reason of section 11 of the Code of Civil Procedure. It appears that prior to the institution of the suit out of which this appeal has arisen, a suit had been instituted in the court of the Assistant Collector, First Class, under section 63 of the local Tenancy Act. The appellant was the plaintiff in that suit. The defendants were (3) Ramnath Prasad, who was the father of Ram Kinkin Deo and Harbaus Deo, two of the present respondents, and also (4) Bhagat Deo, the third respondent before us. The appellant then sued for ejection of the defendants on the ground that they were lessees, and that the lease under which they held would expire at the end of the then current agricultural year.

The defence was to the effect that the defendants were not lessees, but proprietors, and that the plaintiff had no title to the property in question. The Assistant Collector took upon himself to determine the question of title then in issue before him. We cannot help saying that the action of the Assistant Collector seems to us to have been inexpedient. He would have shown better discretion if he had required the defendants to institute a suit in the Civil Court for the determination of this question, which was particularly a question for the Civil Court to determine. Section 199 of the Local Tenancy Act, however, gave the Assistant Collector power to determine the question, and he determined it against the plaintiff, namely, the appellant before us. He held that the plaintiff had no title to the property in dispute.

The plaintiff might have carried this decision in appeal before the District Judge. Had she done so, it would have been within

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the power of the District Judge either to try the question of title himself, or, if he had not all the materials before him necessary for the determination of the question, to have framed issues with reference to that question, and have referred them for trial to any subordinate court of civil jurisdiction. That court might, for instance, have been the court of the Subordinate Judge. The plaintiff, however, did not take any action in this direction, with the result that she has now to meet a decree against her which has become final. The decree was pronounced, it is true, by a Revenue Court, but by a Revenue Court which, as we have held in previous decisions, and as we now hold, is *pro tanto* a Civil Court of competent jurisdiction to decide the question of title. The rulings to which we refer will be found mentioned and considered in *Behari v. Sheobalak*. (1)

To return to the suit out of which this appeal arises, the court of first instance held that the plaintiff's case was barred by the rule of *res judicata*. The lower appellate court also held that the suit of the plaintiff was barred against such of the defendants as were parties to the previous suit brought under section 63 to which we have already referred. With this view of the lower appellate court we agree for the reasons stated above. So far as the present case is concerned the result is, that the appellant's claim must be held to be barred against the respondents to this appeal. We accordingly dismiss the appeal with costs.

*Appeal dismissed.*

(1) (1907) I. L. R., 29 All., 601.