

BY THE COURT.—The order of the Court is that the appeal be dismissed with costs.

*Appeal dismissed.*

## APPELLATE CIVIL.

*Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice  
Sir William Burkitt.*

1905  
January 27.

SHEO DIHAL SINGH (PLAINTIFF) *v.* BADRI NARAIN SINGH  
AND OTHERS (DEFENDANTS).\*

*Act (Local) No. II of 1901 (Agra Tenancy Act), sections 102 and 198—Landlord and tenant—Suit for rent—Jus tertii—Intervenor to whom tenant has not actually paid rent.*

*Held* that section 198 of the Agra Tenancy Act, 1901, does not apply to the case of an intervenor, whose *jus tertii* the tenant defendant in a suit for rent has set up, and who has been made a party to the suit, but to whom the tenant has not actually and in good faith paid rent.

THIS was a suit for rent under section 102 of the Agra Tenancy Act, 1901, to recover arrears amounting to Re. 1, as. 11. The principal defendant, Ram Das, admitted that the arrears were due, but pleaded that one Badri Narain Singh, who was no party to the suit, had purchased the share of the property in respect of which the arrears had accrued and had prohibited him from making any payment of rent. At his own instance Badri Narain Singh was made a party to the suit. The court of first instance (Assistant Collector of the first class of Benares) decreed the claim. From this decision Badri Narain Singh appealed, and the District Judge modified the decree, awarding to Sheo Dihal Singh 1 anna, 10 pies, out of the rent claimed and to Raj Narain who was a co-plaintiff, 9 annas 3 pies. Sheo Dihal Singh appealed to the High Court, and his principal contention was that the intervenor Badri Narain Singh had no right of appeal and therefore the appeal to the lower appellate court should not have been entertained.

Dr. *Satish Chandra Banerji*, for the appellant.

The Hon'ble Pandit *Sundar Lal* (for whom Mr. *M. L. Agarwala*), for the respondents.

\* Second Appeal No. 59 of 1903 from a decree of J. Sanders, District Judge of Benares, dated the 23rd of December, 1902, modifying a decree of Shibban Lal, Assistant Collector, 1st class, of Benares, dated the 26th of October, 1902.

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STANLEY, C. J., and BURKITT, J. :—The sum involved in this appeal is 9 annas, 3 pies, but the learned vakil on behalf of the appellant stated to us that there was an important question of principle involved in the appeal, and we have heard the arguments at very considerable length. The suit was brought under section 102 of Act No. II of 1901 to recover arrears of rent amounting to Re. 1-11. The principal defendant Ram Das admitted that the arrears were due, but he pleaded that one Badri Narain Singh, who was no party to the suit, had purchased the share of the property in respect of which the arrears had accrued and that Badri Narain Singh had prohibited him from making any payment of rent. The meaning of the defence of Ram Das is that he was quite willing to pay his rent, but that he really did not know to whom he should pay it and therefore had not paid it. At his own instance Badri Narain was made a party to the suit. The court of first instance decreed the claim and from this decision Badri Narain appealed, the result of the appeal being that the learned District Judge modified the decree and awarded to Sheo Dihal, the plaintiff before the Court, 1 anna, 10 pies, out of the rent claimed, and to Raj Narain, who was a co-plaintiff, 9 annas, 3 pies. From this appellate decree the present appeal has been preferred by the plaintiff Sheodihal Singh.

The important question of principle which we are told is involved in this appeal is that the person who preferred the appeal to the lower appellate court is Badri Narain, who was not a party to the original proceedings, but had been placed in the array of parties by the court at his own instance. It is contended that an intervenor, such as he, under the circumstances has no right to appeal and that therefore the appeal ought not to have been entertained. For this contention reliance is placed upon section 198 of the Agra Tenancy Act, Act No. II of 1901, it being contended that the only remedy which was open to Badri Narain was to institute a suit in the civil court to have his rights established. That section applies to a case where a tenant who has been impleaded by a landlord, and who has *actually and in good faith paid the rent* of his holding to some third person, pleads such payment. The court in such case is bound to entertain the question of the alleged payment and to inquire into it,

and if the question is decided in favour of the defendant, dismiss the suit. That section has no application to the present case, for the simple reason that the defendant Ram Das did not in this case plead that the relation of landlord and tenant did not subsist between the plaintiff and himself; and he has not paid to any body any portion of the rent of the holding which is the subject matter of the suit. It appears to us therefore that there is no substance in the question of principle which has been raised and that the appeal in this respect has no force. As regards the important question of fact as to whether or not the plaintiff is entitled to the few annas which is claimed in the appeal, we have read with very great care the judgements of the lower court and having given our best consideration to those judgements we see no reason to differ from the conclusion at which the learned District Judge arrived. We therefore dismiss the appeal with costs.

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SINGH.

*Appeal dismissed.*

*Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Griffin.*

SHIAM LAL AND OTHERS (DEFENDANTS) v. NATHE LAL (PLAINTIFF).\*

*Civil Procedure Code (1882), section 316—Execution of decrees—Purchase at auction sale—Date of accrual of auction purchaser's title.*

*Held* that under the Code of Civil Procedure, 1882, the title of a purchaser of immovable property at a sale in execution of a decree to mesne profits arising therefrom does not accrue until the date of the confirmation of such sale. *Amir Kazim v. Darbari Mal* (1) and *Prem Chand Faul v. Purnima Dasi* (2) followed.

CERTAIN shops and premises of the firm of Thakur Das Dhani Ram were sold on the 29th June, 1907, in execution of a decree. The sale was confirmed on the 22nd August, 1908. A sum of Rs. 700 alleged to be due by way of arrears of rent was sold in execution of another decree against Thakur Das Dhani Ram and purchased by the plaintiff Nathe Lal on the 18th December, 1908. The plaintiff sued to recover arrears of rent from the tenants, but was met by the defence that the person entitled was the purchaser at the sale held on the 29th of June, 1907, and not the plaintiff.

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June 3.

\* Second Appeal No. 986 of 1909 from a decree of Muhammad Siraj-ud-din, Judge of the Court of Small Causes, exercising the powers of a Subordinate Judge, of Cawnpore, dated the 13th of July, 1909, confirming a decree of Pirthi Nath, Munsif of Cawnpore, dated the 28th of April, 1909.

(1) (1903) I. L. R., 24 All., 475.

(2) (1833) I. L. R., 15 Cal., 546.