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the value of her interest and give the appellants the whole of the balance. It would be as wrong in our opinion to give the appellants sixteen times the value of their interests in the land and to give Mrs. Powell the whole of the balance. The result is that we hold that the sum in question should be divided in the proportions of $\frac{1}{3}$ rd and $\frac{2}{3}$ rds, $\frac{1}{3}$ rd going to the appellants and $\frac{2}{3}$ rds to Mrs. Powell, that is to say, Rs. 2,590 to the appellants and Rs. 5,178-8-0, to Mrs. Powell. The decree of the court below is modified accordingly.

Decree modified.

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November, 12.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Banerji.

JAGAN NATH AND ANOTHER (PLAINTIFFS) v. AJUDHIA SINGH (DEPENDANT)*
Act (Local) No. II of 1901 (Agra Tenancy Act), section 95—Civil and Revenue Courts—Jurisdiction—Dispute between rival claimants to a tenancy.

Held that the question of title to a tenancy arising between rival claimants to that tenancy is a question which is cognizable by a civil court and is not a matter coming within the purview of section 95 of the Agra Tenancy Act, 1901. *Bhup v. Ram Lal* (1) followed. *Zubeda Bibi v. Sheo Charan* (2) and *Hamid Ali Shah v. Wilayat Ali* (3) referred to.

The facts, of this case were as follows:—

The plaintiffs brought a suit in a Court of Revenue under section 58 of Act No. II of 1901, for ejection of the present defendants from a plot of land which they claimed as their occupancy holding and which, they alleged, had been sub-let to the defendants. The defendant claimed that he was not a sub-tenant, but that the land was his occupancy holding, and he also applied to the Revenue Court for correction of the revenue registers in which the plaintiffs were recorded as occupancy tenants of the land in dispute. The Assistant Collector dismissed the plaintiffs' suit on the ground that there was a defect in the frame of the suit. He, however, in the proceedings taken for the correction of revenue registers, accepted the defendant's plea and directed the defendant's name to be entered as occupancy tenant of the plot in dispute. The plaintiffs then brought the present suit in the civil court on the allegation that the defendant having denied the plaintiffs' title was liable to ejection as a trespasser. The defendant pleaded that the suit was not maintainable in the civil court.

*Appeal No. 59 of 1912, under section 10 of the Letters Patent.

(1) (1911) I. L. R., 38 ALL., 795. (2) (1899) I. L. R., 22 ALL., 83.

(3) (1899) I. L. R., 22 ALL., 93.

The courts below decreed the claim.

The defendant appealed to the High Court, and the appeal, coming before a single Judge of the Court, was decreed and suit dismissed in the following judgement :—

“The plaintiffs in the present suit brought a suit against the first defendant under section 58 of the Agra Tenancy Act, alleging that he was a tenant at will of certain land. The first defendant replied that he was the occupancy tenant of the land, and he at once took steps by instituting another proceeding to have the revenue record corrected. Both cases came before the Assistant Collector together and were disposed of by one judgement. The suit under section 58 was taken on appeal to the Commissioner, who decided that it was not maintainable, because one of the present plaintiffs did not wish to eject the defendant. The result was that in that suit no decision was given as to the rights of the first defendant. Meanwhile the revenue record had been corrected in the manner suggested by the first defendant. The plaintiffs instituted the present suit in the court of the Munsif, saying that the first defendant had taken the land from them as a tenant, that he had resisted the suit under section 58, that when doing so he had pleaded that he was the occupancy tenant of the land, and that this amounted to a denial of the plaintiffs' title, with the result that the plaintiffs were entitled to treat him as a trespasser, and they asked for a decree for possession against him. The Munsif decreed the claim, and his decision was confirmed by the Subordinate Judge on appeal. In second appeal it is contended on behalf of the first defendant that the suit is not maintainable. It appears to me that this contention is sound and must be accepted. The plaintiffs admit that the first defendant was their tenant. They say that he is liable to be treated as a trespasser, because he set himself up as an occupancy tenant. Before I can hold that the defendant, who admittedly was till recently a tenant of some kind, has become a trespasser, I must hold that he was wrong in claiming to be an occupancy tenant of the land. I cannot decide that he was wrong in claiming to be an occupancy tenant without trenching on the jurisdiction of the rent court. The question whether a person is a tenant at will or an occupancy tenant is one in respect of which a suit can be brought under the Tenancy Act, and the decision is reserved exclusively for the revenue court. I hold that the present suit is not maintainable. I allow the appeal and dismiss the plaintiffs' respondents' suit with costs in all courts. I have said nothing about the effect of the order that the revenue record should be corrected, for it is not clear whether it was made under the Revenue Act or was a declaration made under Tenancy Act.”

Against this judgement the plaintiffs appealed under section 10 of the Letters Patent.

Babu Piari Lal Banerji, for the appellants.

The mere fact that the plaintiffs alleged the defendant to be their tenant in the former proceedings in the revenue court did not estop them from now alleging that the defendant having denied their title had become a trespasser, and on the pleadings in the present

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suit it is quite clear that the suit is maintainable in the civil court. The defendant never pleaded in the former suit, nor does he plead in the present suit, that he is the plaintiffs' tenant, and the revenue court not having decided that the relationship between the parties was that of landlord and tenant, there was nothing to prevent the present suit being maintained in the civil court: *Zubeda Bibi v. Sheo Charan* (1), *Hamid Ali v. Shah Wilayat Ali* (2).

Moreover, the dispute in the present case was not a dispute between landlord and tenant but was a dispute between two rival tenants relating to a tenancy, and such a question was not exclusively reserved for the revenue court but could be decided by a civil court. The point is further covered by authority: *Bhup v. Ram Lal* (3).

Maulvi *Shafi-us-zaman*, for the respondent:—

The case relied on relates to a dispute between two rival claimants to tenancy on succession. Moreover, the plaintiffs having alleged that the defendant was their tenant, and having brought their suit in the revenue court for his ejectment could not bring the present suit in the civil court: *Narain Singh v. Govind Ram* (4).

Babu *Piari Lal Banerji* was not heard in reply.

RICHARDS, C. J.—This Letters Patent Appeal arises out of a suit in which the plaintiffs sought to recover possession of certain immovable property, treating the defendant as a trespasser. The facts, so far as I consider them material, are as follows. Prior to the institution of the present suit the plaintiffs brought a suit in the revenue court seeking to eject the defendant as their sub-tenant. They claimed that they were the occupancy tenants and that the defendant was their sub-tenant. The plea put in by the defendant was that he was not a sub-tenant but the occupancy tenant of the holding. The Assistant Collector was of opinion that the defendant was, as he alleged, the occupancy tenant. In other words he held that the relation of landlord and tenant did not exist between the plaintiffs and the defendant. As a result of this finding the suit for ejectment in the revenue court necessarily failed. There was an appeal to the Commissioner who held for other reasons that the ejectment suit brought by the plaintiffs failed. The plaintiffs then instituted the present suit to get possession of the property. The

(1) (1900) I. L. R., 22 All., 83.

(3) (1911) I. L. R., 33 All., 795.

(2) (1900) I. L. R., 22 All., 93.

(4) (1911) 8 A. L. J. R., 431.

question of course upon which the success or failure of the suit depended was whether or not the defendant was the occupancy tenant. The learned Munsif decided in his favour. On appeal the learned Subordinate Judge confirmed the decision of the Munsif. On second appeal to this Court a learned Judge held that the present suit was not cognizable by the civil court and on that ground allowed the appeal and dismissed the plaintiffs' suit.

It seems to me that the question of title to a tenancy arising between rival claimants to that tenancy is a question which is cognizable by a civil court. This has been decided, I think, in principle in the case of *Zubeda Bibi v. Sheo Charan* (1), in the case of *Hamid Ali Shah v. Wilayat Ali* (2) and in the case of *Bhup v. Ram Lal* (3). The learned judge of this Court says :—

“ Before I can hold that the defendant who admittedly was till recently a tenant of some kind, has become a trespasser, I must hold that he was wrong in claiming to be an occupancy tenant of the land. I can not decide that he was wrong in claiming to be an occupancy tenant without trenching on the jurisdiction of the rent court. The question whether a person is a tenant at will or an occupancy tenant is one in respect of which a suit can be brought under the Tenancy Act and the decision is reserved exclusively for the revenue court.” I cannot altogether agree with what the learned Judge has stated above. It is quite true that if a person was claiming to be an occupancy tenant, whilst his landlord was contending that he was a mere tenant-at-will, this would be a question exclusively triable by the revenue court. But that is not the question in the present suit. The question in the present suit is, ‘ to whom does the tenancy belong, does it belong to the plaintiffs or the defendant?’ If the tenancy belongs to the plaintiffs, then they are clearly entitled to treat the defendant as a trespasser, having regard to the plea that he put forward in the revenue court, in which he totally denied their title and claimed that he alone was the occupancy tenant. If, on the other hand, the tenancy belongs to the defendant, it is quite clear that the plaintiffs' suit must be dismissed. It has been contended that the present suit is of the nature mentioned in section 95 of the Tenancy Act. In my opinion it is only necessary to read

(1) (1899) I. L. R., 22 All., 83.

(2) (1899) I. L. R., 22 All., 93.

(3) (1911) I. L. R., 83 All., 795.

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the opening words of that section to see that the section deals with questions arising between landlord and tenant and that it does not in any way apply to rival claimants to any of the various classes of tenancy mentioned in the Tenancy Act.

I, therefore, would allow the appeal, as no other question arises.

BANERJI, J.—I am also of opinion that the jurisdiction of the civil court was not excluded by reason of the provisions of the Tenancy Act. The suit in this case would be cognizable by the civil court unless it came within the purview of any of the clauses of section 95 of that Act. I adhere to the view expressed in the case *Bhup v. Ram Lal* (1) that where a dispute arises between rival claimants to a tenancy that is not a matter which can be determined under section 95. In the present case the dispute is between persons who claimed to be entitled to the tenancy. There is no question as between either of them and the landlord. The plaintiffs allege that the defendant is a trespasser, and they claim to eject him as such. Such a suit could not be brought in the revenue court, and the only court which could take cognizance of it is the civil court. It is true that the plaintiffs sued in the revenue court to eject the defendant on the allegation that the defendant was their sub-tenant. Had the revenue court decided that question and held that the defendant was the tenant of the holding, there might have been some difficulty in the plaintiffs' way; but in this case, as pointed out by the lower appellate court, the Commissioner did not determine the question whether the plaintiffs were the tenants of the holding, or the defendant was so. He dismissed the plaintiffs' suit by reason of a defect in the frame of the suit. So that the question "who is the tenant of the holding" remained undecided by the revenue court. As both parties claimed to be tenants, the question was one between rival claimants to the tenancy, and it could not be taken into the revenue court in any of the forms of suits mentioned in section 95 of the Tenancy Act. The civil court therefore had jurisdiction to hear the case. On the merits that court found in favour of the plaintiffs. They were therefore entitled to the decree which was granted by the courts below, and this appeal must prevail.

(1) (1911) I. L. R., 33 All., 796.

By THE COURT :—The order of the Court is that we allow the appeal, set aside the decree of the learned Judge of this Court and restore the decree of the lower appellate court with costs of both hearings in this Court.

Appeal allowed.

Before Mr. Justice Muhammad Rafiq and Mr. Justice Piggott.

SIS RAM AND OTHERS (DEFENDANTS) v. ASGHAR ALI (PLAINTIFF)*

Landholder and tenant—Agreement to deliver agricultural produce over and above cash rent—Cess—Agreement opposed to public policy.

Certain tenants holding under a registered *qabuliat* agreed therein to deliver to their landlord, over and above the sum specified as a money rent, certain agricultural produce, and further to supply the landlord with a cart and bullocks "when necessary" and in default the landlord might claim the cash value of the said dues along with the rent. *Held*, on suit by the landlord to recover the cash equivalent of such dues for several years, that the covenant in question was for various reasons unenforceable. *Abdul Hai v. Nathua* (1), *Sadanand Pande v. Ali Jan* (2) and *Sheoambar Ahir v. The Collector of Azamgarh* (3) referred to.

This was a suit to recover the money value of certain *zamin-dari* dues alleged to be realizable from the defendants under the following circumstances. The defendants were tenants of the plaintiff, holding under a registered *qabuliat*, by which they agreed to pay a certain rent in cash. Besides the payment of rent, they agreed to deliver to the plaintiff annually certain agricultural produce and to provide the plaintiff with a cart and bullocks "when necessary." In default the plaintiff might claim the cash value of the said dues along with the rent. The suit was filed in the court of a Munsif, who dismissed it. On appeal the District Judge remanded the case to the court of first instance, acting under sections 196 and 197 of the Agra Tenancy Act, 1901. Against this order of remand the defendants appealed to the High Court.

Mr. D. R. Sawhny, for the appellants.

Maulvi Ghulam Mujtaba and Maulvi Shaif-uz-zaman, for the respondent.

MUHAMMAD RAFIQ and PIGGOTT, JJ.:—In this case, the plaintiff is the landholder and the defendants are the tenants of

*First Appeal No. 42 of 1912 from an order of C. E. Guiterman, Additional Judge of Meerut, dated the 15th of December 1911.

(1) (1903) I.A. L. J., 537.

(2) (1910) I. L. R., 32 All., 199.

(3) (1912) I. L. R., 34 All., 358.

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