

FULL BENCH.

1914
January, 30.

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

BINDESRI PANDE AND OTHERS (PETITIONERS) v. GOKUL (OPPOSITE PARTY)*.

Act (Local) No. II of 1901 (Agra Tenancy Act), section 177(e)—Suit for ejectment in Revenue Court—Defendant pleading possession as proprietor—Question of proprietary title—Appeal.

The plaintiff sued in a Revenue Court to eject the defendant on the allegation that he (the plaintiff) was the occupancy tenant of the plot in question and the defendant was his sub-tenant. The defendant pleaded that he was in possession, not as a sub-tenant of the plaintiff but as a proprietor, and that the plot was his *khud-kashi*.

Held, that on these pleadings a question of proprietary title was in issue in the case within the meaning of section 177 (e) of the Agra Tenancy Act, 1901, and that an appeal lay to the District Judge and not to the Commissioner.

See *Dal Chand v. Sasmala* (1) referred to. *Udit Tiwari v. Bihari Pande* (2) overruled.

THIS was a reference under section 195 of the Agra Tenancy Act, 1901, made by the Commissioner of the Gorakhpur Division.

The facts were as follows:—

The plaintiff sued for ejectment alleging himself to be an occupancy tenant and the defendant to be his sub-tenant. The defendant pleaded that he was the proprietor and was not liable to ejectment. The court of first instance (Assistant Collector) decreed the suit and ordered ejectment. The defendant appealed to the District Judge, who returned the memorandum of appeal to be presented to the Commissioner. He held that no question of proprietary title was involved. The memorandum of appeal was then presented to the Commissioner, who was of opinion that a question of proprietary title was involved. He, therefore, made the present reference, which came before PIGGOTT and RYVES, JJ., who referred it to a Full Bench.

Munshi Iswar Suran, for the appellants.

Section 177 allows an appeal to District Judge in cases in which a question of proprietary title is raised and is in the issue in the court of first instance and in appeal. In the present case a question of proprietary title was clearly raised and was in issue in both

* Civ. M. S. C. No. 453 of 1913.

(1) (1905) 2 A. L. J., 176. (2) (1913) 1. L. R., 35 All., 521.

1914

BHINDESI
PANDÉ
v
GOKUL.

courts. Defendant's possession is admitted, and the whole question is whether he is a proprietor or a sub-tenant. A contrary view is taken in *Udit Tiwari v. Bihari Pandé* (1), and the ground on which that view is taken is that the defendants could not sue in a civil court, if they had occasion to go there, and ask for a declaration of their proprietary right. One of the Judges who decided the abovenamed case took a contrary view in *Kalyan Mal v. Samand* (2), and there he followed an earlier case *Dal Chand v. Shamla* (3).

The respondent was not represented.

RICHARDS, C. J., BANERJI and RYVES JJ.—This is a reference from the Commissioner of Gorakhpur under section 195 of Act II of 1901. The plaintiff sued in the Revenue Court to recover possession of a certain plot of land. He alleged that he was the occupancy tenant of the plot in question and that the defendant was his sub-tenant. The defendant pleaded that he was in possession of the plot, not as the sub-tenant of the plaintiff, but that he was the proprietor and that the plot in question was his *khud kashit*. The Assistant Collector of the first class decreed the plaintiff's claim. The defendant appealed to the District Judge. The District Judge held that no question of proprietary title was in issue and that accordingly no appeal lay to him. The memorandum of appeal was returned for presentation to the proper court. It was then presented before the Commissioner, who has made the present reference.

In our opinion a question of proprietary title was in issue in the court of first instance and was also a matter in issue in the appeal within the meaning of section 177. Most distinctly the defendant alleged that he was the proprietor and that he was in possession as such of the plot. The plaintiff may have been prepared to admit that the defendant was a co-sharer, but he denied that he was in possession as proprietor, alleging that he himself was the occupancy tenant and that the possession of the defendant was as a sub-tenant to him. In the case of *Dal Chand v. Shamla and Parma* (3) a Bench of this Court of which one of us was a member took the view that clause (e) of section 177 applied and

(1) (1913) I. L. R., 35 All., 521. (2) I. L. R., 35 All., 157.

(3) (1908) 2 A. L. J., 176.

that an appeal lay to the District Judge. However in the case of *Udit Tiwari v. Bihari Pande* (1) a contrary view was taken, although the facts were identical. The learned Judges say "We cannot see that the defendant's title as proprietor was ever denied by the plaintiff. Certainly the latter never claimed to be himself the proprietor of the land in dispute, or to have any right in the same, other than the right of an occupancy tenant." It is true, in the present case, the plaintiff did not claim to be proprietor, and the question whether the plaintiff or the defendant was the proprietor did not arise; but section 177 provides for an appeal to the District Judge when any question of proprietary title has been and is in issue. The plaintiff denied that the defendant was entitled to possession as proprietor, though he did not deny that he was a co-sharer. The importance of the case is to have a settled practice. We think that the language of the clause is wide enough to include a case like the present where one party claims actual possession as proprietor and the other side disputes such claim and that under the circumstances an appeal lay to the District Judge under section 177, clause (e), of the Tenancy Act. We accordingly direct that the memorandum of appeal be returned by the Commissioner and the same be received by the District Judge, who shall proceed to hear and determine the same according to law.

This is our answer to the reference. The costs of this reference will abide the result.

Memorandum of appeal returned.

REVISIONAL CRIMINAL.

Before Mr. Justice Ryves and Mr. Justice Piggott.

EMPEROR v. PIARI LAL.*

Act (Local) No. I of 1900 (*United Provinces Municipalities Act*), section 147—
Prosecution for disobedience to notice—Validity of the notice to be considered.

Before anyone can be convicted of an offence under section 147 of the United Provinces Municipalities Act the court must be satisfied that what he had disobeyed was a notice lawfully issued by the Board under the powers conferred upon it by the Act.

1914
 February.

* Criminal Reference No. 1231 of 1913.

(2) (1913) I. L. R., 35 All., 521.