

charges. Subsequently Mrs. Williams complained to the police with reference to an item of Rs. 182, which she had paid to Keymer in connection with the purchase of a motor car and which she charged him with criminally misappropriating. The case was re-instated in the court of the same magistrate who had already passed the order of discharge as stated above. In this second case he has taken some evidence on behalf of the prosecution and framed a charge. This court was then moved in revision on the ground that it was not open to the Magistrate having once discharged the accused, to again inquire into the same charge on a second complaint. It seems to us that we are bound by the ruling in *Queen-Empress v. Umedan* (1). That ruling completely covers the facts of this case, and it has been followed more than once in this Court. That, no doubt, was a case of the dismissal of a complaint under section 203 of the Code of Criminal Procedure, but in our opinion the principle is the same and applies to this present case. We think, therefore, that the Magistrate had jurisdiction. We think, however, that the more appropriate tribunal to decide this case is a civil court. The application is rejected. With these observations we direct the record to be returned for disposal.

Application rejected.

APPELLATE CIVIL.

Before Mr. Justice Ryves and Mr. Justice Piggott.

BADRI KASAUNDHAN (DEFENDANT) v. SARJU MISR (PLAINTIFF) AND
BINDESRA KUNWAR AND OTHERS (DEPENDANTS) *

1913
December 2,

Act (Local) No. II of 1901 (Agra Tenancy Act), section 167; schedule IV, Group C, No. 80—Civil and Revenue Courts—Jurisdiction—Suit by reversionary heir on death of Hindu widow to recover a holding.

The widow and son's widow of a separated Hindu, being in possession as such of a fixed rate holding which had belonged to their late husband and father-in-law, sold the same to a *malhajan*, who in turn sold it to the zamandar.

Held, on suit brought by the reversionary heir of the late tenant some three years after the last widow's death for recovery of possession of the holding, (1) that the suit was of the nature contemplated by section 167 and schedule IV, Group C, No. 80, of the Agra Tenancy Act, 1901, and would not lie in a Civil

* First Appeal No. 164 of 1913, from an order of V. N. Mehta, Subordinate Judge of Jaunpur, dated the 4th of July, 1913.

(1) Weekly Notes, 1895, p. 86.

1913

BADRI
KASAUUNDHAN
v.
SARJU MISR.

Court, and (2) that the suit was therefore barred by limitation. *Ram Lal v. Churni Lal* (1) referred to.

THE facts of this case were as follows :—

The plaintiff alleged that he was the next reversioner of one Ramphal, who was a tenant at fixed rates of a certain holding. He died, leaving him surviving his widow and a widow of a pre-deceased son. These ladies continued in possession of this holding and were entitled to a Hindu widow's estate therein. They then sold the holding to a *mahajan*, who in turn sold it to the zamindars. Subsequently the widows died. The plaintiff, three years after the death of the last widow, brought this suit in a Civil Court for possession of the holding and for mesne profits. It was pleaded that the suit was not cognizable by a Civil Court and that it was barred by limitation, because, in order to decide the jurisdiction of the court to hear the suit and to ascertain the period of limitation applicable, the allegations of the plaintiff, and not the nature of the defence set up, were to be considered. The Munsif fixed various issues, but tried one only, that of limitation, and holding the suit barred as having been brought more than six months after the widow's death, dismissed it. On appeal this finding was reversed. The appellate court held that the rule of limitation applicable was twelve years, and remanded the suit for decision on the other issues. One of the defendants appealed from that order of remand.

Munshi *Girdhari Lal Agarwala*, for the appellant.

Munshi *Kalindi Prasad*, for the respondents.

RYVES and PIGGOTT, JJ :—The facts of this case as disclosed in the plaintiff may be concisely stated thus, so far as is necessary for the purpose of this appeal. The plaintiff alleged that he was the next reversioner of one Ramphal, who was a tenant at fixed rates of a certain holding. He died, leaving him surviving his widow and a widow of a pre-deceased son. These ladies continued in possession of this holding and were entitled to a Hindu widow's estate therein. They then sold the holding to a *mahajan*, who in turn sold it to the zamindars. Subsequently the widows died. The plaintiff, three years after the death of the last widow, brought this suit in a Civil Court for possession of the holding and for mesne profits. It is unnecessary to set out the defence

beyond stating that it was pleaded that the suit was not cognizable by a Civil Court and that it was barred by limitation, because in order to decide the jurisdiction of the court to hear the suit and ascertain the period of limitation applicable, the allegations of the plaintiff, and not the nature of the defence set up, are to be considered. The learned Munsif fixed various issues, but tried one only, that of limitation, and holding the suit barred, as having been brought more than six months after the widow's death, dismissed it. On appeal this finding was reversed. The appellate court held that the rule of limitation applicable was twelve years and he remanded the suit for decision on the other issues.

The defendant has appealed from that order of remand. It is quite clear that if the Civil Courts have jurisdiction then the twelve years' rule is applicable, but it is equally clear that if the plaintiff could have obtained his remedy in the Revenue Courts then his suit is admittedly barred.

The test seems to be to ascertain what in substance and reality is the relief sought. If that relief could have been obtained on a properly worded plaint presented to a Revenue Court then the jurisdiction of a Civil Court is barred.

To apply this test in the present case. What is the real remedy the plaintiff seeks? To obtain possession of a tenancy at fixed rates. Against whom does he seek this relief? The zamindars. On what grounds? That he is the reversionary heir of the last tenant, that on his death he sought to obtain possession, but was obstructed by the zamindars. Under these circumstances a suit under Group C, No. 30 of Schedule IV of the Tenancy Act would seem applicable, and if so, the suit ought to have been brought in the Revenue Court within six months from the date of dispossession.

We think it important to maintain for the benefit of tenants who are involved in disputes of any kind with the landlord, the swift and comparatively inexpensive remedy provided by a suit under the Tenancy Act wherever the provisions of that Act seem reasonably applicable.

The case of *Ram Lal v. Chunnvi Lal* (1) is not quite on all fours with the present case, but it shows that the provisions of section 79 of the Tenancy Act apply to cases where there has been

(1) (1905) 2 A. L. J., 69

1913

BADRI
KASARUNDEAN
v.
SARIF MISHR.

1913

BADRI
KABANDHAN
v.
SARJU MISH.

a constructive as well as an actual or physical ejection of the plaintiff from his tenancy. The principle underlying that ruling seems to be, that where a person claiming to have succeeded to a tenancy by right of inheritance finds that, on endeavouring to take possession of the same, his right is denied and his possession ousted by the zamindar, he has suffered an ejection at the hands of the landlord within the meaning of the section, and his appropriate remedy is by a suit under the Tenancy Act as indicated above. For these reasons we allow this appeal, set aside the order of the lower appellate court and restore the decree of the court of first instance with costs throughout.

Appeal allowed.

1913

December, 2.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Tudball.
DALIP SINGH AND OTHERS (DEFENDANTS.) v. KUNDAN SINGH AND OTHERS
(PLAINTIFFS)*

Civil Procedure Code (1908), section 104; order XLIII, rule 10 (a)—Order of appellate court returning plaint for presentation to the proper court—Appeal—Act No. VII of 1887 (Suits Valuation Act), section 11.

Held that an appeal lies under the Code of Civil Procedure, 1908, as it did under the former Code, from an order returning a plaint to be presented to the court. *Wahidullah v. Kanhaya Lal* (1) followed.

Where, however, such an order is to be made by an appellate court, it is the duty of such court first to consider whether the over-valuation or under-valuation of the suit has prejudicially affected its disposal on the merits and thereafter to take action in the manner prescribed by section 11 of the Suits Valuation Act, 1887.

THE facts of the case were as follows :—

A suit for pre-emption was brought in the court of Munsif by the plaintiffs respondents. They sought possession of certain property, the value of which they gave as Rs. 800. There were many defences, but, amongst other objections taken by the defendants, it was urged that the real value of the property was Rs. 1,500 and the Munsif's court had no jurisdiction to entertain the suit. The Munsif framed all the issues in the case, took evidence thereon, held that the value of the property was Rs. 1,500, but in spite of that proceeded to decide all the issues and dismissed the suit. The right to pre-empt was based

*First Appeal No. 157 of 1913 from an order of Banke Behari Lal, Second Additional Judge of Aligarh, dated the 24th of June, 1913.

(1) (1902) I. L. R., 25 All., 174.