

“occupancy tenant.” Now it is contended before us that the suit as brought is not exactly of this description. The case lies in our opinion very near the boundary, and, like the learned Judges who decided the case of *Birham Khushal v. Sumera* (1), we feel it necessary to guard ourselves against laying down that a suit for a declaration of legal status cannot be entertained by a Civil Court merely because such a suit may be brought in consequence of a dispute which originally arose between landlord and tenant. We can conceive of a plaint, similar to the present but differently drafted, in which a mere declaration as to the existence of a valid marriage might have been sought, and in respect of which it could scarcely have been held that the jurisdiction of the Civil Court was ousted. When we come to look at this plaint, taking notice of such circumstances as that the order of the Revenue Court of the 22nd of January, 1912, is referred to as the origin of the cause of action, that no other property of the deceased Chikhuri is specified except this occupancy holding and that the relief sought is not only a declaration that the plaintiff was the wedded wife of Chikhuri, but also that she was the rightful heir of his estate, we think that in taking cognizance of this suit the Civil Courts would in substance contravene the provisions of section 167 of the Tenancy Act. They would be taking cognizance of a dispute or matter in respect of which a suit under the Tenancy Act might have been brought. On this finding we accept this appeal, and, setting aside the order appealed against, restore the decree of the court of first instance dismissing the suit of the plaintiff respondent. The defendants appellants will get their costs throughout.

Appeal allowed.

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

1913
November, 28.

UMRAO SINGH (DEFENDANT) v. RAMJI DAS AND OTHERS (PLAINTIFFS).
Act No. I of 1877 (Specific Relief Act), section 9—Possessory title—Suit for recovery of possession—Plaintiff in actual possession without title ousted by defendants having no title a u.

Held that the purchasers of a house and site in a village who had actually held possession for some years, but who had otherwise no title, were entitled to

* Appeal No. 15 of 1913 under section 10 of the Letters Patent.

(1) (1913) I. L. R., 35 All., 299.

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succeed in a suit for recovery of possession as against persons who had in fact ousted them but could show no title at all to the possession of the house or site. *Wali Ahmad Khan v. Ajudhia Kundu* (1) and *Lachman v. Shambhu Narain* (2) referred to.

THIS was an appeal under section 10 of the Letters Patent from the judgement of a single Judge of the Court. The facts of the case appear from the judgement under appeal, which was as follows:—

“The finding on the issue remitted by Mr. Justice Piggott is that the plaintiffs have no right to occupy the house or site thereof.

“In the view which I take of this case, it was unnecessary to remit that issue and the finding on that issue does not dispose of the case. The facts are that the plaintiffs in November, 1891, purchased a house and site then in the occupation of one Bahadur. They held possession for some years, though the Judge has been unable to ascertain the precise period. They were then dispossessed by the defendants, who are trespassers. This suit was brought on the 11th of March, 1910, the plaintiffs relying on their purchase and subsequent possession and alleging that the defendants had taken the premises from them on a lease which they subsequently repudiated. The defendants admitted the purchase of the premises by the plaintiffs, and they pleaded that they had been in adverse possession for more than twenty years and that the plaintiffs shortly after their purchase had removed the materials of the house and abandoned the site. The first court found that the defendants had not proved adverse possession for twelve years and it gave the plaintiffs a decree. On appeal the District Judge dismissed the suit on the ground that Bahadur had not been entitled to the site, and all that the plaintiffs had acquired by their purchase was a right to the materials of the house. The defendants have admittedly no title whatever either to the site or the house. The plaintiffs were, it is found, in possession for some time, and having regard to the nature of the property that possession must be deemed to have continued until it is proved to have been interrupted. It is not now contended that the defendants have acquired title by adverse possession. In these circumstances it seems to me that the plaintiffs are entitled to recover on the strength of their possessory title—*Wali Ahmad Khan v. Ajudhia Kundu* (1). I was referred to the case of *Lachman v. Shambhu Narain* (2), but that does not conflict with the previous decision in 13 Allahabad, and in that case the defendants were persons entitled to the property.

“I allow this appeal, set aside the decree of the court below and restore the decree of the first court with costs here and in the lower court.”

The defendant appealed.

Babu *Durga Charan Banerji* (for whom Babu *Piari Lal Banerji*), for the appellants.

Mr. *A. Haidar*, for the respondents.

(1) (1891) 1, L. R., 13 All., 537.

(2) (1910) 1, L. R., 33 All., 174.

RICHARDS, C. J. and BANERJI, J. —Having regard to the circumstances of this case and to the pleadings, we cannot say that it was wrong to grant to the plaintiff a decree for possession of the property in suit. We, therefore, dismiss the appeal with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Justice Sir Pramada Charan Banerji and Mr. Justice Ryves.

EMPEROR v. W. O. KEYMER. *

Criminal Procedure Code, section 437—Accused once tried and discharged—Fresh inquiry into the same charge on a second complaint—Jurisdiction.

Held that it is competent to a magistrate who has tried and discharged an accused person on particular charges to again inquire into the same charges on a second complaint. Queen-Empress v. Umedan (1) followed.

THE facts of the case, stated briefly, were as follows:—One Mrs. Williams brought a complaint against Keymer charging him with cheating and criminal misappropriation in connection with the purchase of a carriage and a motor car for her. The case was tried at length, and on the 17th of March, 1913, the trying magistrate, being of opinion that the charges were not made out by the evidence adduced, discharged Keymer on all the charges. Some time later Mrs. Williams made a fresh complaint to the police, accusing Keymer of criminal misappropriation of a sum of Rs. 182 which she had paid to him in connection with the purchase of the motor car. This item of Rs. 182 had been included in the first complaint and was dealt with at the trial ending with the order of discharge, dated the 17th of March, 1913. The police made a fresh report upon the second complaint of Mrs. Williams, and the same magistrate who had discharged the accused revived the case against him. The accused applied to the High Court in revision against the order of revival.

Babu Satya Chandra Mukerji, for the applicant:—

The first complaint covered the matter of Rs. 182 which is the subject of the present proceedings. The accused having been tried and discharged on that complaint, and the order of discharge not having been set aside by a competent authority under section 437 of the Code of Criminal Procedure, the matter cannot be revived.

* Criminal Revision No. 843 of 1913 from an order of G. O. Byrne, Joint Magistrate of Benares, dated the 8th of August, 1913.

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

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