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Before Mr. Justice Ryves and Mr. Justice Piggott.
RAM CHARITRA RAI AND OTHERS (DEFENDANTS) v. JINJI AHIRIN
(PLAINTIFF)*

Act (Local) No. II of 1901 (Agra Tenancy Act), sections 95 and 167; schedule IV, group C, No. 34—Jurisdiction—Civil and Revenue Courts—Occupancy holding—Succession.

On the death of an occupancy tenant, a person alleging herself to be his widow applied in the Revenue Court for mutation of names in her favour. This application was resisted by the zamindars, who denied that the applicant was legally the wife of the deceased tenant. The Revenue Court rejected the application for mutation, and the applicant thereupon filed her suit in the Civil Court asking for a declaration that she had been legally married to the deceased tenant and was the rightful heir to his estate, viz., the occupancy holding. No other property of the deceased was specified. *Held* that in the circumstances the relief claimed fell within the purview of section 95 of the Agra Tenancy Act, 1901, and that the suit was not cognizable by a Civil Court. *Birham Khushal v. Sumera* (1) referred to.

THE facts of this case are set forth in the judgement of the Court. Briefly they were as follows:—

One Chikhuri, an occupancy tenant of the property in dispute, died. The plaintiff, alleging herself to be his widow, applied for mutation of names in her favour. The zamindars resisted the application and pleaded that the applicant was not the legal wife of Chikhuri. The Revenue Court rejected her application. She thereupon, brought this suit for a declaration of her right as the legally married wife of Chikhuri to possession of the holding. The court of first instance dismissed the suit, but the lower appellate court reversed the decree, and remanded the case for trial on the merits. Against this order of remand the defendants appealed to the High Court.

Mr. M. L. Agarwala (for the appellants) submitted that the real object of the suit was to get a declaration that the plaintiff was entitled to succeed as heir to the occupancy holding of the last tenant. There was no allegation that the deceased left any other property. Section 167 of the Agra Tenancy Act prohibited a suit in respect of any dispute or matter as to which a suit could be brought under schedule IV thereto. Item No. 34 of group (C) of the fourth schedule provided for a suit to obtain a declaration as to the name and description of the tenant of a holding. The dispute between

* First Appeal No. 123 of 1913 from an order of Muhammad Husain, Subordinate Judge of Ghazipur, dated the 1st of May, 1913.

the parties in the correction of jamabandi case was whether plaintiff had succeeded to the occupancy holding of the last tenant as heir. If a suit under section 95 (a) of the Tenancy Act had been brought, the allegations made and the relief asked would have been substantially the same. He called the attention of the Court to the following cases: *Mahesh Rai v. Chandar Rai* (1) and *Subarni v. Bhagwan Khan* (2).

Munshi Govind Prasad (for the respondent) submitted that, reading the plaint as a whole, the suit was cognizable by the Civil Court. The plaintiff wanted a declaration to the effect that she was the lawfully wedded wife of the deceased tenant, and also wanted a declaration to the effect that she was entitled to his estate (*matruka*). That declaration could not be given by the Revenue Court. Section 95 of Act II of 1901 did not apply, because the suit did not fall within either clause (a) or (b) of the section. He referred to *Dulhna Kunwar v. Unkar Pande* (3), *Baru Mul v. Niadar* (4), *Niadar v. Baru Mul* (5) and *Birham Khushal v. Sumera* (6).

RYVES and PIGGOTT, JJ:—This appeal arises out of the following facts:—one Chikhuri Ahir was the occupancy tenant of a certain holding in a village in the Ballia district. On his death Musammat Jinsi applied to the Revenue Court for mutation of names in her favour, that is to say, she asked to be recorded as the occupancy tenant of the said holding in succession to Chikhuri, whom she described as her late husband. The proprietors of the village, the appellants now before us, replied that Musammat Jinsi was a concubine and not the lawful wife of Chikhuri Ahir; and an order was passed on the 22nd of January, 1912, refusing mutation of names in favour of Musammat Jinsi. On the 18th of June, 1912, the said Musammat filed a suit in the court of the Munsif of Muhammadabad. She recited the facts already set forth, stated that she had been lawfully married to Chikhuri Ahir and that she was up to the date of the institution of the suit still in possession and occupation by right of inheritance of the entire estate left by Chikhuri. The plaint further recites that the order of the Revenue Court is calculated to cause injury to the plaintiff in future and the date of this order is referred to as the date of the origin of the cause of

(1) (1889) I. L. R., 13 All., 17. (4) (1901) I. L. R., 23 All., 360.

(2) (1896) I. L. R., 19 All., 101. (5) (1901) I. L. R., 24 All., 153.

(3) (1897) I. L. R., 19 All., 452. (6) (1913) I. L. R., 35 All., 299

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action. The relief sought is a declaration that the plaintiff is the wedded wife of Chikhuri and rightful heir to his estate (*matruka*). The suit was resisted on a variety of pleas, and more especially on the allegation that the plaintiff had been dispossessed and the land occupied by the defendants themselves as their *khud-kasht*. With this point, however, we are not concerned in the present appeal. The learned Munsif fixed a number of issues, but decided only two of them. The point of his decision was that the suit as brought was not cognizable by a Civil Court and on this finding he dismissed the suit.

In appeal this finding has been reversed by the Subordinate Judge of Ghazipur and the suit remanded to the court of first instance for trial of the remaining issues. Against this order of remand the defendants have filed the present appeal. In the course of argument before us the case has narrowed itself to this, whether the suit as brought is one in respect of which the cognizance of a Civil Court is barred by the provisions of section 167 of the Agra Tenancy Act (Local Act II of 1901). Under that section no court other than a Revenue Court can take cognizance of any dispute or matter in respect of which a suit or application might have been made to a Revenue Court under one or other of the articles of the fourth schedule to the said Act. In group C, article No. 34 of the aforesaid schedule, it is laid down that a suit may be brought before an assistant collector of the first class exercising jurisdiction under that Act for declaration as to any of the matters specified in section 95 of the Act. Referring back to section 95 we find that at any time during the continuance of a tenancy, either the landholder or the tenant may sue for a declaration as to any of the following matters, including amongst others, (a) the name and description of the tenant of the holding, (b) the class to which the tenant belongs. According to Musammat Jinsi the tenancy referred to in her plaint still continues and she is in possession of this holding as an occupancy tenant in succession to her late husband. It seems to us that it can scarcely be denied that, on these allegations of fact, Musammat Jinsi might have brought a suit for a declaration that the name and description of the tenant of the holding in question is Musammat Jinsi, widow of Chikhuri Ahir; and the class to which the said tenant belongs is

“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.

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

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

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