

referred and that this is a matter in which it is peculiarly important that the established course of decision should not be disturbed. At any rate I am not prepared to dissent from the conclusion arrived at by the learned District Judge that the present claim was not one which could have been maintained as a suit for profits in the Revenue Court under section 164 of the Tenancy Act. If this is so, then both the objections taken fall to the ground, as neither order II, rule 2, of the Code of Civil Procedure, nor section 11 of the same Code could bar the present suit. I would, therefore, dismiss the appeal with costs.

WALSH, J.—I concur.

Appeal dismissed.

APPELLATE CIVIL.

*Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice
Muhammad Rafiq.*

MAHABIE SINGH AND ANOTHER (PLAINTIFFS) v. BHAGWANTI (DEFENDANT).
*Act (Local) No. II of 1901 (Agra Tenancy Act), section 22 - Occupancy holding—
Succession—Holding owned by a joint Hindu family.*

An occupancy holding owned by a joint Hindu family does not devolve at the death of the last surviving member of the joint family on that member's widow.

THIS was a suit for a declaration that certain leases of occupancy and non-occupancy holdings, executed by Musammat Bhagwanti, widow of one Ram Prasad, were null and void on the ground that Ram Prasad was a member of a joint Hindu family with the plaintiffs and the co-parcenary body which made up the joint Hindu family of which Ram Prasad was a member constituted the "tenant," therefore no interest devolved on Musammat Bhagwanti. The principal defence was that Ram Prasad died a separated Hindu and on his death having regard to the provisions of section 22 of the Tenancy, his interest devolved on Musammat Bhagwanti and she was therefore entitled to execute the leases in question. The court of first instance decreed the suit. On appeal the District Judge modified the decree. The plaintiffs appealed to the High Court.

1916

DIGBHAJAI
SINGH
v.
HIRA DEVI.

1916
February, 9.

* Second Appeal No. 1388 of 1914, from a decree of B. J. Dalal, District Judge of Benares, dated the 26th of June, 1914, modifying a decree of Banke Bihari Lal, Subordinate Judge of Benares, dated the 27th of March, 1914.

The Hon'ble Munshi *Gokul Prasad*, for the appellants.

The Hon'ble Dr. *Sundar Lal*, for the respondent.

1916

MAHABIR
SINGH

v.
BHAGWANTI.

RICHARDS, C. J., and MUHAMMAD RAFIQ, J.:—This appeal arises out of a suit in which (in effect) the plaintiffs seek to set aside a lease made by one Musammat Bhagwanti. The court of first instance decreed the plaintiffs' claim. On appeal the learned District Judge modified the decree of the court of first instance. Musammat Bhagwanti, who made the lease, was the widow of one Ram Prasad. Ram Prasad, Mahabir and Lachman Singh, according to the finding of both the courts below, constituted a joint Hindu family, and the holdings in respect of which Musammat Bhagwanti made the lease have been found by both the courts below to be joint family property. The court of first instance considered that upon this finding the plaintiffs were entitled to the relief they sought. The learned District Judge says in the course of his judgement:—"The learned Subordinate Judge held that Ram Prasad and the plaintiffs were members of a joint Hindu family and that the two holdings were joint family holdings. On this finding he has based the conclusion that Musammat Bhagwanti had no interest in the tenancy land. I agree with the finding but not with the conclusion." The learned District Judge thought that having regard to the provisions of section 22 of the Tenancy Act, Ram Prasad had an interest which, failing male lineal descendants, devolved on his widow. In our opinion this view is not correct. Section 22 of the Tenancy Act provides that when a tenant dies his interest shall devolve in the way specified in the section. Ram Prasad was not the "tenant" of the holdings in question. The co-parcenary body which made up the joint Hindu family of which he was a member constituted the "tenant." The very moment that Ram Prasad died the co-parcenary body continued to be the tenant, but the body was composed of the survivors of the family. Ram Prasad had no "interest" which devolved upon anyone. We allow the appeal, set aside the decree of the learned District Judge and restore the decree of the court of first instance with costs in all courts.

Appeal allowed.