

1915

TULSHI RAM
v.
ABRAB
AHMAD.

It is against this order that Tulshi Ram has come to this Court in revision. In the circumstances of the case the order of the first class Magistrate being, as I have pointed out, *ultra vires*, the District Magistrate's order declining to allow the police to be utilized for the purpose of carrying out an illegal order is in my opinion a very proper order indeed with which I would not interfere. It seems to me that it is an order which is not open to revision by this Court at all. It is curious that under section 145 of the Code, the Magistrate is allowed to treat a person, who has been wrongfully and forcibly dispossessed, as having been in actual possession on the date on which he passed his initial order under clause 1 of the section, while the section provides no machinery under which or through which the court may proceed to remove the wrong-doer from possession and put the other man in his place. As far as I can see the remedy for Tulshi Ram in the present case is to make a complaint in respect of his wrongful and forcible dispossession and to prosecute the other side, and if the Magistrate should convict, then it would be open to him to apply to the Magistrate to exercise the powers granted by section 522 of the Code. It is quite clear that in proceeding under section 145, as the law stands, it is impossible for the Magistrate to forcibly turn out one person and place another in possession of the property. The application is dismissed.

Rule discharged.

APPELLATE CIVIL.

1915
July, 16.

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

KEDAR AND OTHERS (PLAINTIFFS) v. DEO NARAIN AND OTHERS (DEFENDANTS)*
Act (Local) No. II of 1901 (Agra Tenancy Act), section 32—Suit for possession of portion of holding—Suit maintainable.

All that section 32 of the Tenancy Act provides against is the splitting up of a holding or the distribution of the rent so as to bind the land-holders. Clause 2 does no more than enact that a suit brought for such a purpose shall not be entertained by a Civil or Revenue Court; but where a plaintiff sues for possession of a portion of a fixed rate tenancy alleging that he is owner thereof and the defendant is a trespasser, such a suit is not barred by

* Appeal No. 13 of 1915, under section 10 of the Letters Patent.

the provisions of section 32 of the Agra Tenancy Act, 1901, *Najibullah v. Gulsher Khan* (1) followed.

THE facts of this case are fully set out in the judgement.

Pandit *Braj Nath Vyas*, for the appellants.

Mr. *M. L. Agarwala*, for the respondents.

RICHARDS, C. J., and BANERJI, J.:—This appeal arises out of a suit in which the plaintiff claimed one biswa, which was alleged to be part of 4 biswas which constituted a fixed rate holding. The lower courts and this Court have dismissed the suit as being barred by section 32 of the Tenancy Act and as having been concluded by the authority of the case of *Achhey Lal v. Janki Prasad* (2). Section 32 of the Agra Tenancy Act provides that “no division of a holding or distribution of the rent payable in respect thereof, made by the co-owners therein shall be binding on the land-holder unless it is made with his consent.” Clause (2) provides that “no suit or other proceeding for the division of a holding or distribution of the rent thereof shall be entertained in any Civil or Revenue Court.” It is quite clear that all that section 32 provides against is the splitting up of a holding or the distribution of the rent so as to bind the land-holders. Clause (2) does no more than enact that a suit brought for such a purpose shall not be entertained by a Civil or Revenue Court. In the present case the plaintiff alleges that he has become the owner, entitled to possession, of portion of a fixed rate tenancy and that the defendant is a trespasser. He does not ask for the division of the holding nor for the distribution of the rent. He does not seek to bind the land-holder in any way by the suit he brings. It seems to us therefore that section 32 does not bar the present suit. We may mention that the case relied upon by the lower appellate court and the learned Judge of this Court has been overruled by the Full Bench decision in *Najib-ullah v. Gulsher Khan* (1). As the suit was decided on a preliminary point in the lower courts the case must be remanded. We accordingly allow the appeal, set aside the decree of this Court and also of both the courts below, and remand the case to the court of first instance through the lower appellate court with directions to re-admit the suit under its original number in the file and proceed to hear and

1915

KEDAR
v.
DEO NARAIN.

(1) (1906) I. L. R., 29 All., 66.

(2) (1909) I. L. R., 31 All., 348.

1915

KEDAR
v.
DEO NARAIN.

determine the same according to law. Costs here and hitherto will be costs in the cause.

Appeal decreed, cause remanded.

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

1915
July, 17.

NATHU AND ANOTHER (PLAINTIFFS) v. GOKALIA AND ANOTHER (DEFENDANTS)*
*Act (Local) No. II of 1901 (Agra Tenancy Act), section 22—Occupancy holding
— Succession—Hindu Law.*

One P an occupancy tenant died while the Rent Act of 1881 was in force leaving a widow and a daughter him surviving. The widow entered into possession and died after the present Tenancy Act had come into force. The present suit was brought by the brothers and nephews of P to eject the daughter and to get possession of the holding. *Held* that the plaintiffs had no title either under section 22 of the Agra Tenancy Act or under Hindu Law.

THE facts of this case were as follows:—

The plaintiffs' suit was for possession of an occupancy holding. The holding at one time belonged to one Parbhu. He died before the present Tenancy Act came into force. He was succeeded by his widow, who remained in possession for a number of years and died after the present Act came into force. The plaintiffs alleged themselves to be brothers and nephews of Parbhu, and two of them allege that they were joint in cultivation with Parbhu. The principal defendant is the daughter of Parbhu. The court of first instance dismissed the plaintiffs' suit and this decision was affirmed by the lower appellate court.

Mr. M. L. Agarwala, for the appellants.

Pandit Mohan Lal Sandal, for the respondents.

RICHARDS, C.J., and BANERJI, J.:—This appeal arises out of a suit in which the plaintiffs claimed possession of an occupancy holding. The holding at one time belonged to one Parbhu. He died before the present Tenancy Act came into force. He was succeeded by his widow, who remained in possession for a number of years and died after the present Act came into force. The plaintiffs alleged themselves to be brothers and nephews of Parbhu, and two of them allege that they were joint in cultivation

* Second Appeal No. 1175 of 1914, from a decree of Saiyid Muhammad Ali, District Judge of Moradabad, dated the 20th of May, 1914, confirming a decree of Harihar Prasad, Munsif of Haveli, dated the 20th of February, 1914.